TITLE 25—INDIANS

Chap. Sec.
19. Indian Claims Settlements With States [New] 1701
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CHAPTER 1—BUREAU OF INDIAN AFFAIRS

Sec.
13-1. Authorization of appropriations for funds for basic educational support through parent committees [New].

§ 13. Expenditure of appropriations by Bureau of Indian Affairs

ALTERNATIVE METHODS FOR EQUITABLE DISTRIBUTION OF SUPPLEMENTAL PROGRAM FUNDS; DEVELOPMENT, PUBLICATION, ETC., OF FORMULA

Pub. L. 95-561, title XI, § 1102, Nov. 1, 1978, 92 Stat. 2316, provided that:

"(a) The Secretary of the Interior shall develop alternative methods for the equitable distribution of any supplement program funds provided, pursuant to an appropriation under the Act of November 2, 1921, commonly referred to as the Snyder Act [this section], for contracting under the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act [sections 452 to 457 of this title], and shall publish in the Federal Register by March 1, 1979, such alternatives for the purpose of allowing eligible tribes to comment by May 1, 1979. At that time, the Secretary shall conduct a field survey listing all alternative formula.

"(b) By July 1, 1979, the Secretary shall establish and publish the formula in the Federal Register which the majority of such tribes determine, but vote certified to the Secretary, to be most equitable and shall use such formula for purposes of distribution of the funds appropriated pursuant to such Act beginning on or after October 1, 1979. The Secretary shall, in accordance with procedures consistent with that prescribed herein, revise such formula periodically as necessary".

PAYMENTS FOR BASIC EDUCATIONAL SUPPORT GRANTS OR CONTRACTS; AUTHORIZATION; TIME

Pub. L. 95-561, title XI, § 1103(a), Nov. 1, 1978, 92 Stat. 2316, as amended by Pub. L. 96-46, § 2(b)(1), Aug. 6, 1979, 93 Stat. 341, provided that:

"(1) From sums already appropriated under the Act of November 2, 1921 (25 U.S.C. 13) and notwithstanding any other provision of law or any requirement of a grant or agreement relating to the timing of payments for basic support contracts or grants under the Act of April 16, 1934 (25 U.S.C. 452-457), the Secretary of the Interior shall make payments of all funds appropriated under the authority of the Act of November 2, 1921, for fiscal year 1978 (including any fiscal year 1978 funds subsequently obligated in fiscal year 1979 from such appropriation) for basic support contracts or grants to any school that had a deficit in its operating budget for fiscal year 1978 as a consequence of the lack of complete payment from the Department of the Interior for such contract or grant. Such payments shall be made in accordance with any applicable condition of such contracts or grants other than conditions relating to the timing of payments.

"(2) The Secretary of the Interior shall make the payments referred to in paragraph (1) not later than thirty days after the date of the enactment of this Act [Nov. 1, 1978], Saturdays, Sundays, and legal public holidays, as established by section 6103 of title 5, United States Code, shall not be considered as days for purposes of the preceding sentence."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13-1, 13a, 450f, 450h, 861c, 903a, 1912, 1933 of this title.

§ 13-1. Authorization of appropriations for funds for basic educational support through parent committees

Such sums as are needed under section 13 of this title are authorized to be appropriated to provide funds for basic educational support through parent committees under sections 452 to 457 of this title, to those public schools educating Indian students and whose total sum of Federal, State, and local funds is insufficient to bring the education of the enrolled Indian students to a level equal to the level of education provided non-Indian students in the public schools in which they are enrolled where the absence of such support would result in the closing of schools or the reduction in quality of the education program afforded Indian students attending public schools.

(Pub. L. 95-561, title XI, § 1103(b), Nov. 1, 1978, 92 Stat. 2316.)

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 1530 of Pub. L. 95-561, set out as an Effective Date note under section 2701 of Title 20, Education.

CHAPTER 2—OFFICERS OF INDIAN AFFAIRS

§ 47. Employment of Indian labor and purchase of products of Indian industry

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 406, 564h, 697, 747, 1633 of this title.

CHAPTER 2A—INDIAN CLAIMS COMMISSION

Sec.
70v-3. Cases transferred to United States Court of Claims [New].
(a) Attorney fees and expenses.
(b) Information from governmental departments and official records as evidence.
(c) Payment of final judgments.

Sec.

(d) Review.

(e) Expert assistance for claimants in preparation and trial of claims in transferred cases.

§ 70b. Members of Commission

[See main edition for text of (a) and (b)]

(c) Restriction on engagement in other vocations or representation of tribes; penalty

No Commissioner shall engage in any other business, vocation, or employment during his term of office nor shall he, during his term of office, represent any Indian tribe, band, or group in any matter whatsoever, or have any financial interest in the outcome of any tribal claim. Any person violating the provisions of this subdivision shall be fined not more than $10,000 or imprisoned not more than two years, or both.

[See main edition for text of (d)]

(As amended Oct. 12, 1978, Pub. L. 95-453, 92 Stat. 1110.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-453 struck out the prohibition against the representation of any tribe or the having of a financial interest in the outcome of a tribal claim by a Commissioner in a two year period following his term of office.

INDIAN SELF-DETERMINATION CONFLICT OF INTEREST REQUIREMENT INAPPLICABLE TO COMMISSIONER NOT IN OFFICE

Section 1 of Pub. L. 95-453 provided in part that: "Section 105(j) of the Indian Self-Determination Act (88 Stat. 2206, 2210) [section 450i(f) of this title] shall not apply to those members of the Indian Claims Commission affected by this Act [amending subsec. (c) of this section]."

§ 70m. Information from governmental departments; official records as evidence

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70v-3 of this title.

§ 70n. Attorneys of claimants; selection, practice, and fees; Attorney General to represent United States; compromise of claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70v-3 of this title.

§ 70n-1. Expert assistance for preparation and trial of claims; revolving fund established for loans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-2, 70n-4, 70n-5, 70v-3 of this title.

§ 70n-2. Inability of applicants to pay for assistance required; denial of loans in cases of unreasonable fees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-4, 70n-5, 70v-3 of this title.

§ 70n-4. Interest; repayment from judgments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-2, 70n-5, 70v-3 of this title.

§ 70n-5. Crediting to revolving fund of repayments and interest

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-2, 70n-4, 70v-3 of this title.

§ 70n-6. Liability of United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-2, 70n-4, 70n-5, 70v-3 of this title.

§ 70n-7. Approval of contingent fee contracts prohibited

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-2, 70n-4, 70n-5, 70v-3 of this title.

§ 70s. Judicial review

[See main edition for text of (a)]

(b) Notice of final determination; time for appeal to Court of Claims; interlocutory determinations; scope of review

When the final determination of the Commission has been filed with the clerk of said Commission the clerk shall give notice of the filing of such determination to the parties to the proceeding in manner and form as directed by the Commission. At any time within three months from the date of the filing of the determination of the Commission with the clerk either party may appeal from the determination of the Commission to the Court of Claims, which Court shall have exclusive jurisdiction to affirm, modify, or set aside such final determination. In similar manner and with like effect either party may appeal to the Court of Claims from any interlocutory determination by the Commission establishing the liability of the United States notwithstanding such determination is not for any reason whatever final as to the amount of recovery; and any such interlocutory appeal shall be taken on or before January 1, 1961, or three months from such interlocutory determination, whichever is later: *Provided*, That the failure of either party to appeal from any such interlocutory determination shall not constitute a waiver of its right to challenge such interlocutory determination in any appeal from any final determination subsequently made in the case. On said appeal the Court shall determine whether the findings of fact of the Commission are supported by substantial evidence, in which event they shall be conclusive, and also whether the conclusions of law, including any conclusions respecting "fair and honorable dealings", where applicable, stated by the Commission as a basis for its final determination, are valid and supported by the Commission's findings of fact. In making the foregoing determinations, the Court shall review the whole record or such portions thereof as may be cited by any party, and due ac-

count shall be taken of the rule of prejudicial error. The Court may at any time remand the cause to the Commission for such further proceedings as it may direct, not inconsistent with the foregoing provisions of this section. The Court shall promulgate such rules of practice as it may find necessary to carry out the foregoing provisions of this section. Notwithstanding any other provision of law, upon application by the claimants within thirty days from March 13, 1978, the Court of Claims shall review on the merits, without regard to the defense of res judicata or collateral estoppel, that portion of the determination of the Indian Claims Commission entered February 15, 1974, adjudging that the Act of February 28, 1877 (19 Stat. 254), effected a taking of the Black Hills portion of the Great Sioux Reservation in violation of the fifth amendment, and shall enter judgement accordingly. In conducting such review, the Court shall receive and consider any additional evidence, including oral testimony, that either party may wish to provide on the issue of a fifth amendment taking and shall determine that issue de novo.

[*See main edition for text of* (c)]

(As amended Mar. 13, 1978, Pub. L. 95-243, 92 Stat. 153.)

REFERENCES IN TEXT

The Act of February 28, 1877 (19 Stat. 254), referred to in subsec. (b), is act Feb. 28, 1877, ch. 72, 19 Stat. 254, which was not classified to the Code.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-243 added provisions relating to review by the Court of Claims of the determination of the Indian Claims Commission entered Feb. 15, 1974, concerning the Act of Feb. 28, 1877 (19 Stat. 254).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70v-3 of this title.

§ 70v-3. Cases transferred to United States Court of Claims

(a) Attorney fees and expenses

The powers of the Commission set forth in the first paragraph of section 70n of this title, relative to fees and expenses for any attorney or attorneys for any tribe, band, or other identifiable group of Indians, shall be exercised by the United States Court of Claims with respect to any case transferred pursuant to this chapter.

(b) Information from governmental departments and official records as evidence

The powers of the Commission set forth in section 70m of this title, relating to information from governmental departments and official records as evidence, may be exercised by the United States Court of Claims with respect to any case transferred pursuant to this chapter.

(c) Payment of final judgments

Final judgments rendered by the United States Court of Claims on cases transferred to it pursuant to this chapter, shall be paid in the same manner as other judgments of the court in accordance with the provisions of sections 2517 and 2518 of title 28.

(d) Review

Cases transferred to the United States Court of Claims pursuant to this chapter, shall be thereafter subject to review by the Supreme Court in accordance with the provisions of section 1255 of title 28: *Provided*, That any decision of the Commission rendered in a case prior to its transfer, which could have been appealed pursuant to the provisions of section 70s of this title, shall be appealable to the Court of Claims subject to such provisions: *Provided further*, That such provisions shall not otherwise be applicable to transferred cases.

(e) Expert assistance for claimants in preparation and trial of claims in transferred cases

The provisions of sections 70n-1 to 70n-7 of this title shall continue and shall be in effect with respect to all cases transferred to the United States Court of Claims pursuant to this chapter.

(Aug. 13, 1946, ch. 959, § 29, as added July 20, 1977, Pub. L. 95-69, § 2, 91 Stat. 273.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), (d), (e), was, in the original, this Act, meaning act Aug. 13, 1946, ch. 959, 60 Stat. 1049, which enacted this chapter, amended section 259 of former Title 28, Judicial Code and Judiciary, and enacted provisions set out as notes under section 70 of this title. For complete classification of this Act to the Code, see Tables.

Section 70n-3 of this title, included in the reference in subsec. (e) to sections 70n-1 to 70n-7 of this title, was repealed by Pub. L. 93-608, § 1(16), Jan. 2, 1975, 88 Stat. 1970.

CHAPTER 4—PERFORMANCE BY UNITED STATES OF OBLIGATIONS TO INDIANS

SUBCHAPTER III—DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS

§ 151. Deposits in bank by disbursing agents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 406, 564h, 697, 747 of this title.

CHAPTER 5—PROTECTION OF INDIANS

§ 174. Superintendence by President over tribes west of Mississippi

AMERICAN INDIAN POLICY REVIEW COMMISSION

Pub. L. 93-580, Jan. 2, 1975, 88 Stat. 1910, as amended by Pub. L. 94-80, §§ 1-4, Aug. 9, 1975, 89 Stat. 415, 416; Pub. L. 95-5, Feb. 17, 1977, 91 Stat. 13, provided:

[*See main edition for text of first two undesignated pars.; Secs. 1 to 4*]

"REPORT OF THE COMMISSION

"SEC. 5. (a) Upon the report of the task forces made pursuant to section 4 hereof, the Commission shall review and compile such reports, together with its independent findings, into a final report. Within nine months after the reports of the investigating task forces, the Commission shall submit its final report, together with recommendations thereon, to the President of the Senate and the Speaker of the House of Representatives. The Commission shall cease to exist three months after submission of said final report but

not later than June 30, 1977. All records and papers of the Commission shall thereupon be delivered to the Administrator of the General Services Administration for deposit in the Archives of the United States.

[*See main edition for text of Sec. 6*]

"[AUTHORIZATION OF APPROPRIATIONS]

"SEC. 7. There is hereby authorized to be appropriated a sum not to exceed $2,600,000 to carry out the provisions of this resolution. Until such time as funds are appropriated pursuant to this section, salaries and expenses of the Commission shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman. To the extent that any payments are made from the contingent fund of the Senate prior to the time appropriation is made, such payments shall be chargeable against the maximum amount authorized herein."

§ 202. Inducing conveyances by Indians of trust interests in lands

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 406, 564h, 697, 747 of this title.

CHAPTER 7A—PROMOTION OF SOCIAL AND ECONOMIC WELFARE

§ 305a. Promotion of economic welfare through development of arts and crafts; powers of Board

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 8—RIGHTS-OF-WAY THROUGH INDIAN LANDS

§§ 321 to 328

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, § 1-101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade.

CHAPTER 9—ALLOTMENT OF INDIAN LANDS

§ 331. Allotments on reservations; irrigable and nonirrigable lands

OSAGE INDIAN TRIBE OF OKLAHOMA

Pub. L. 95-496, § 3(b), Oct. 21, 1978, 92 Stat. 1660 provided that: "Any Osage Indian having received a certificate of competency under paragraph 7 of section 2 of the Act of June 28, 1906 (34 Stat. 539, 542); section 3 of the Act of March 2, 1929 (45 Stat. 1478, 1480) [amending act Feb. 27, 1925, ch. 359, 43 Stat. 1008, which is set as a note under this section in the main edition of the code]; or the Act of February 5, 1948 (62 Stat. 18) [set out as a note under this section in the main edition of the code], may make application to the Secretary of the Interior to revoke such certificate and the Secretary shall revoke such certificate: *Provided*, That revocation of any certificate shall not affect the legality of any transactions heretofore made by reason of the issuance of any such certificate. Restrictions against alienation of lands heretofore removed are not reimposed."

Pub. L. 95-496, § 4, Oct. 21, 1978, 92 Stat. 1661, provided that: "In order to conserve natural resources and provide for the greatest ultimate recovery of oil and gas underlying the Osage mineral estate, the Secretary of the Interior is authorized to establish rules and regulations under which oil and gas leases producing from a common source of supply may be unitized."

Pub. L. 95-496, § 5(d), Oct. 21, 1978, 92 Stat. 1662, provided that: "Notwithstanding the provisions of subsections (a), (b), and (c) of this section [subsec. (a) and (b) were not classified to the Code; subsec. (c) amended act Feb. 27, 1925, ch. 359, 43 Stat. 1008, which is set out as a note under this section in the main Edition of the Code], disposition of any Osage headright or mineral interest shall be subject to the provisions of section 7 of this Act [set out as a note below]."

Pub. L. 95-496, §§ 6 to 9, Oct. 21, 1978, 92 Stat. 1662, 1663, 1664, provided that:

"SEC. 6. (a) With the approval of the Secretary of the Interior, any person of Osage Indian blood, eighteen years of age or older, may establish an inter vivos trust covering his headright or mineral interest except as provided in section 8 hereof; surplus funds; invested surplus funds; segregated trust funds; and allotted or inherited land, naming the Secretary of the Interior as trustee. An Osage Indian having a certificate of competency may designate a banking or trust institution as trustee. Said trust shall be revocable and shall make provision for the payment of funeral expenses, expenses of last illness, debts, and an allowance to members of the family dependent on the settlor.

"(b) Property placed in trust as provided by this section shall be subject to the same restrictions against alienation that presently apply to lands and property of members of the Osage Tribe, and the execution of such instrument shall not in any way affect the tax-exempt status of said property.

"SEC. 7. After passage of this Act, [Oct. 21, 1978], a person not of Osage Indian blood, except a child legally adopted by an Osage Indian in any court of competent jurisdiction and the lineal descendants of such adopted child, subject to the stipulation that such adopted child or his lineal descendants cannot alienate his Osage headright or mineral interest and the devolution thereof is limited to intestacy, will, or inter vivos trust the same as if he were of Osage Indian blood, is prohibited from receiving more than a life estate in an Osage headright interest owned by an Osage Indian, such adopted child or his lineal descendants, whether such interest is received by will, inter vivos trust, or Oklahoma law of intestate succession. Upon the death of such recipient, the Osage headright or mineral interest shall vest in the remaindermen thereof who are of Osage Indian blood, adopted children, and/or lineal descendents [sic] of such adopted children designated by the will or inter vivos trust of the deceased Osage Indian, his adopted child, or the lineal descendants of such adopted child. If such instrument does not designate remaindermen thereof who are of Osage Indian blood, adopted children, and/or lineal descendants of such adopted children, or if the deceased died intestate, the Osage headright or mineral interest shall vest in his heirs pursuant to the Oklahoma law of intestate succession, subject to the above limitations. On the death of the non-Osage beneficiary or heir, except in the case of adopted children or lineal descendants of such adopted children, such

Osage headright or mineral interest shall vest in the Osage Tribe and the Tribe shall pay the estate of the non-Osage beneficiary or heir the market value of such Osage headright or mineral interest. Payments under this section shall be made from Osage tribal mineral funds authorized to be expended by section 8(b) hereof.

"SEC. 8. (a) Any individual right to share in the Osage mineral estate (commonly referred to as 'headright') owned by a person not of Indian blood may not, without the approval of the Secretary of the Interior, be sold, assigned, or transferred. Sale of any such interest shall be subject to the right of the Osage Tribe to purchase it within forty-five days at the highest legitimate price offered the owner thereof.

"(b) Prior to the time and tribal mineral income is segregated for distribution to individual headright owners, the Secretary of the Interior, at the request of the Osage Tribal Council, may direct the use of any such income for the purchase of Osage headright interests offered for sale to the Osage Tribe pursuant to this section or vested in the Osage Tribe pursuant to section 7 of this Act.

"SEC. 9. Under such regulations as the Secretary of the Interior may prescribe, the heirs and legatees of any deceased owner of an Osage headright or mineral interest, real estate on which restrictions against alienation have not been removed, and funds on deposit at the Osage Agency may be determined by the Secretary if such aggregate interests do not exceed $10,000: *Provided,* That no court of competent jurisdiction has undertaken the probate of the deceased's estate and a request for such administrative determination has been made to the Secretary by one or more of the heirs or legatees."

Pub. L. 95-496, § 3(a), Oct. 21, 1978, 92 Stat. 1660 repealed act Feb. 5, 1948, ch. 46, 62 Stat. 18.

* * * * *

Act Feb. 27, 1925, ch. 359, 43 Stat. 1008, as amended by acts Mar. 2, 1929, ch. 493, §§ 3, 4, 45 Stat. 1480; Sept. 1, 1950, ch. 832, 64 Stat. 572; Oct. 21, 1978, Pub. L. 95-496, §§ 3(c), 5(7), 92 Stat. 1661, 1662, provided that:

[*See main edition for text of first two undesignated pars.*]

"2. Upon the death of an Osage Indian who does not have a certificate of competency, his or her moneys and funds and other property accrued and accruing to his or her credit and which have heretofore been subject to supervision as provided by law may be paid to the administrator or executor of the estate of such deceased Indian or direct to his heirs or devisees, or may be retained by the Secretary of the Interior in the discretion of the Secretary of the Interior, under regulations to be promulgated by him: *Provided,* That the Secretary of the Interior shall pay to administrators and executors of the estates of such deceased Osage Indians a sufficient amount of money out of such estates to pay all lawful indebtedness and costs and expenses of administration when approved by him; and, out of the shares belonging to heirs or devisees, above referred to, he shall pay the costs and expenses of such heirs or devisees, including attorney fees, when approved by him, in the determination of heirs or contest of wills. Upon the death of any Osage Indian of less than one-half of Osage Indian blood or upon the death of an Osage Indian who has a certificate of competency, his moneys and funds and other property accrued and accruing to his credit shall be paid and delivered to the administrator or executor of his estate to be administered upon according to the laws of the State of Oklahoma: *Provided,* That upon the settlement of such estate any funds or property subject to the control or supervision of the Secretary of the Interior on the date of the approval of this Act, which have been inherited by or devised to any adult or minor heir or devisee who does not have a certificate of competency, and which have been paid or delivered by the Secretary of the Interior to the administrator or executor shall be paid or delivered by such administrator or executor to the Secretary of the Interior for the benefit of such Indian and shall be subject to the supervision of the Secretary as provided by law.

"3. Lands devised to members of the Osage Tribe who do not have certificates of competency, under wills approved by the Secretary of the Interior, and lands inherited by such Indians, shall be inalienable unless such lands be conveyed with the approval of the Secretary of the Interior. Property of Osage Indians not having certificates of competency purchased as hereinbefore set forth shall not be subject to the lien of any debt, claim, or judgment except taxes, or be subject to alienation, without the approval of the Secretary of the Interior.

"4. Whenever the Secretary of the Interior shall find that any member of the Osage Tribe, to whom has been granted a certificate of competency, is squandering or misusing his or her funds, he may revoke such certificate of competency after notice and hearing in accordance with such rules and regulations as he may prescribe, and thereafter the income of such member shall be subject to supervision and investment as herein provided for members not having certificates of competency to the same extent as if a certificate of competency had never been granted: *Provided,* That all just indebtedness of such member existing at the time his certificate of competency is revoked shall be paid by the Secretary of the Interior, or his authorized representative, out of the income of such member, in addition the quarterly income hereinbefore provided for: *And provided further,* That such revocation or cancellation of any certificate of competency shall not affect the legality of any transactions theretofore made by reason of the issuance of any certificate of competency.

[*See main edition for text of pars. 5 and 6*]

"7. Hereafter none but heirs of Indian blood and children legally adopted by a court of competent jurisdiction and parents, Indian or non-Indian, shall inherit from Osage Indians any right, title, or interest to any restricted land, moneys, or Osage headright or mineral interest."

* * * * *

§ 337. Allotments in national forests

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 406, 564h, 697, 747 of this title; title 43 section 1617.

§ 348. Patents to be held in trust; descent and partition

Upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever:

[*See main edition for text of section commencing with first proviso; credits*]

CODIFICATION

Text preceding the first proviso is set out in this supplement to correct typographical error appearing in the main edition.

§ 351. Patents with restrictions for lots in villages in Washington

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 406, 564h, 697, 747 of this title; title 43 section 1617.

§ 352. Cancellation of trust patents within power of reservoir sites

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 406, 564h, 697, 747 of this title; title 43 section 1617.

§ 353. Sections inapplicable to certain tribes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 406, 564h, 697, 747 of this title; title 43 section 1617.

CHAPTER 10—DESCENT AND DISTRIBUTION: HEIRS OF ALLOTTEE

§ 372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 353, 373, 374, 406, 564h, 697, 747 of this title; title 43 section 1617.

§ 373. Disposal by will of allotments held under trust

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 374, 397, 406, 564h, 747 of this title; title 43 section 1617.

CHAPTER 12—LEASE, SALE, OR SURRENDER OF ALLOTTED OR UNALLOTTED LANDS

§ 403. Leases of lands held in trust

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 406, 564h, 697, 747 of this title; title 43 section 1617.

§ 406. Sale of timber on lands held under trust

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747 of this title; title 43 section 1617.

§ 407. Sale of timber on unallotted lands

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747 of this title; title 43 section 1617.

§ 408. Surrender of allotments by relinquishment for benefit of children

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 406, 564h, 697, 747 of this title; title 43 section 1617.

CHAPTER 14—MISCELLANEOUS

SUBCHAPTER V—PROTECTION OF INDIANS AND CONSERVATION OF RESOURCES

Sec.

472a. Indian preference laws applicable to Bureau of Indian Affairs and Indian Health Service positions [New].
(a) Establishment of retention categories for purposes of reduction-in-force procedures.
(b) Reassignment of employees other than to positions in higher grades; authority to make determinations respecting.
(c) Waiver of applicability in personnel actions; scope, procedures, etc.
(d) Annual report respecting Indians qualifying for preference positions.
(e) Placement of non-Indian employees in other Federal positions; assistance of Office of Personnel Management; cooperation of other Federal agencies; reporting requirements.
(f) Definitions.

SUBCHAPTER XVII—YAKIMA TRIBES

609c. Disbursement of minor's share of judgment funds [New].
(a) Definitions.
(b) Disbursement to parent of minor.
(c) Disbursements under plan for best interest of minor.
(d) Monthly reports.
609c-1. Tax exemption; eligibility for Federal assistance without regard to payments [New].

SUBCHAPTER XXI—NAVAJO AND HOPI TRIBES: REHABILITATION

640c-1. Authorization of appropriations [New].

SUBCHAPTER XXX-A—SILETZ INDIAN TRIBE: RESTORATION OF FEDERAL SUPERVISION [NEW]

711. Definitions.
711a. Federal recognition.
(a) Extension; laws applicable; eligibility for Federal services and benefits.
(b) Restoration of rights and privileges.
(c) Hunting, fishing or trapping rights and tribal reservations not restored.
(d) Effect on property rights or obligations, contractual rights or obligations, or obligations for taxes.
711b. Membership roll.
(a) Opening; duty of Secretary, Interim Council, and tribal officials.
(b) Prerequisites for inclusion.
(c) Verification of descendancy, age, and blood; appeal; finality of determination; possession of enrollment records and materials.
(d) Franchisement.
711c. Interim Council.
(a) Nomination and election of members; notice; meetings; ballot requirements; approval by Secretary.
(b) Powers of Council.
(c) Council vacancies; notice; meeting; election.
711d. Tribal constitution and bylaws.
(a) Election; time and procedure.
(b) Pre-election distribution of proposed constitution and bylaws and brief impartial description; consultation by Interim Council with members of tribe.

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(c) Majority vote necessary for adoption of constitution and bylaws.
(d) Election of tribal officials provided for in constitution and bylaws; ballot requirements.
711e. Reservation.
(a) Establishment.
(b) Plan; negotiation with tribe; approval by tribal officials; submittal to Congress.
(c) Notification and consultation.
(d) Provisions of plan.
(e) Statement.
711f. Rules and regulations.

SUBCHAPTER XXXVII-A—WYANDOTTE, PEORIA, OTTAWA, AND MODOC TRIBES OF OKLAHOMA: RESTORATION OF FEDERAL SUPERVISION [NEW]

861. Federal recognition of Wyandotte, Ottawa, and Peoria Tribes.
(a) Extension or confirmation.
(b) Repeal of provisions terminating Federal supervision.
(c) Tribal rights and privileges; reinstatement and continuation.
(d) Continuation of property or contractual rights or obligations and tax obligations.
861a. Organization of tribes.
(a) Modoc Tribe; extension of Federal recognition and assistance; applicability of provisions relating to Klamath Tribe; membership requirements.
(b) Ottawa and Peoria Tribes; extension of Federal assistance.
(c) Wyandotte Tribe; confirmation of validity of organization and continuation.
861b. Restoration of supervision as fulfilling other Federal statutory requirements.
(a) Wyandotte, Peoria, and Ottawa Tribes; right or interest in tribal land.
(b) Modoc Tribe; right or interest in tribal land.
(c) Modoc Tribe; publication of notice in Federal Register of organization for purposes of compliance.
861c. Programs and services by United States; participation in by tribes as result of return to status as Indians.

SUBCHAPTER LXXVII—PASCUA YAQUI TRIBE [NEW]

1300f. Status of Pascua Yaqui Indian people.
(a) Eligibility for services and assistance.
(b) Administration of lands; application of other laws.
(c) Receipt in trust by United States of land for Pascua Yaqui Tribe; criminal and civil jurisdiction.
1300f-1. Tribal constitution and bylaws; review by Secretary; publication of documents and membership role in Federal Register.
1300f-2. Membership of Tribe.

SUBCHAPTER II—INDIAN SELF-DETERMINATION

§ 450. Congressional statement of findings

ACT REFERRED TO IN OTHER SECTIONS

The Indian Self-Determination and Education Assistance Act is referred to in title 7 sections 178g, 178h; title 20 section 241bb-1; title 40 section 461; title 42 section 5302.

§ 450b. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3371; title 7 section 2012; title 15 section 636; title 42 sections 300*l*-2, 3057a.

§ 450c. Reporting and audit requirements for recipients of Federal financial assistance

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 750.

§ 450d. Criminal activities involving grants, contracts, etc.; penalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 750.

§ 450e. Wage and labor standards and preference requirements for contracts or grants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2011 of this title, title 29 section 750.

§ 450f. Contracts by Secretary of the Interior with tribal organizations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450h, 450j, 450m of this title; title 7 section 2020; title 20 section 2303; title 29 section 750; title 42 section 2204b.

§ 450g. Contracts by Secretary of Health, Education, and Welfare with tribal organizations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450h, 450j, 450m of this title; title 7 section 2020; title 20 section 2303; title 42 section 2004b.

§ 450h. Grants to tribal organizations or tribes

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450j, 450m, 2009 of this title; title 7 section 2020; title 20 section 2303; title 42 section 2004b.

§ 450i. Retention of Federal employee coverage, rights and benefits by employees of tribal organizations

EX. ORD. NO. 11899. PROVIDING FOR PROTECTION OF CERTAIN CIVIL SERVICE EMPLOYMENT RIGHTS OF FEDERAL PERSONNEL WHO LEAVE FEDERAL EMPLOYMENT TO BE EMPLOYED BY TRIBAL ORGANIZATIONS

Ex. Ord. No. 11899, Jan. 26, 1976, 41 F.R. 3459, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[*See main edition for text of first par.*]

Section 1. The Office of Personnel Management is hereby designated and empowered to exercise, without approval, ratification, or other action by the President, but after consultation with the Department of the Interior and the Department of Health, Education, and Welfare, the authority vested in the President by Section 105(i) of the Indian Self-Determination and Education Assistance Act [subsec. (e) of this section] (hereinafter referred to as the Act), to issue regulations necessary to carry out the provisions of subsections (e)(2), (e)(3), (e)(4), (f), (g) and (h) of section 105 of the act, [subsecs. (a)(2), (3), (4), (b), (c), and (d) of this section], to carry out the provisions of subsection (e)(1) of section 105 of the act [subsec. (a)(1) of this section] pertains to section 8151 of title 5 of the United States Code, and to protect and assure any other civil service employment rights which it finds appropriate.

Sec. 2. The Office of Personnel Management shall, after consultation with the Department of the Interior and the Department of Health, Education, and Welfare, issue regulations, as it deems appropriate, providing for the establishment, granting, and exercise of reemployment rights for employees who leave Federal employment for employment by an Indian tribal organization under provisions of the act.

[*See main edition for text of Sec. 3*]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8336; title 7 section 2020; title 20 section 2303.

§ 450j. Contract or grant provisions and administration

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020; title 20 section 2303.

§ 450k. Rules and regulations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450h, 450j of this title; title 7 section 2020; title 20 section 2303.

§ 450*l*. Report by tribe requesting contract or grant; contents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020; title 20 section 2303.

§ 450m. Rescission of contract or grant and assumption of control of program, etc.; authority; grounds; procedure; correction of violation as prerequisite to new contract or grant agreement; construction with occupational safety and health requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020; title 20 section 2303.

§ 450n. Sovereign immunity and trusteeship rights unaffected

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020; title 20 section 2303.

SUBCHAPTER III—CONTRACTS WITH STATES

§ 452. Contracts for education, medical attention, relief and social welfare of Indians

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13–1, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 243, 2303, 3232; title 43 section 1620.

§ 453. Use of Government property by States and Territories

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13–1, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 243, 2303, 3232; title 43 section 1620.

§ 454. Rules and regulations; minimum standards of service

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13–1, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 243, 2303, 3232; title 43 section 1620.

§ 455. Contracts for education in public schools; submission of education plan by contractor as prerequisite; criteria for approval of plan by Secretary of the Interior; participation by non-Indian students

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13–1, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 243, 2303, 3232; title 43 section 1620.

§ 456. Election and functions of local committee of Indian parents in school districts having school boards composed of non-Indian majority; revocation of contracts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13–1, 304a, 450d to 450f, 453, 454, 456, 458, 458d of this title; title 20 sections 243, 2303, 3232; title 43 section 1620.

§ 457. Reimbursement to school districts for educating non-resident students

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13–1, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 243, 2303, 3232; title 43 section 1620.

§ 458. School construction, acquisition, or renovation contracts

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions and redesignation of the Secretary and Department of Health, Education, and Welfare as the Secretary and Department of Health and Human Services, see sections 3441, 3503 and 3508 of Title 20, Education.

SUBCHAPTER V—PROTECTION OF INDIANS AND CONSERVATION OF RESOURCES

§ 461. Allotment of land on Indian reservations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 462. Existing periods of trust and restrictions on alienation extended

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 463. Restoration of lands to tribal ownership; protection of existing rights; Papago Indian Reservation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 463d. Restoration of lands in Umatilla Indian Reservation to tribal ownership

INHERITANCE OF TRUST OR RESTRICTED LANDS

Pub. L. 95-264, Apr. 18, 1978, 92 Stat. 202, provided:

"That the right to inherit trust or restricted land on the Umatilla Indian Reservation, to the extent that the laws of descent of the State of Oregon are inconsistent herewith, shall be as provided herein.

"SEC. 2. When any Indian dies leaving any interest in trust or restricted land within the Umatilla Reservation and not having lawfully devised the same, such interest shall descend in equal shares to his or her children and to the issue of any deceased child by right of representation; and if there is no child of the decedent living at the time of his or her death, such interests shall descend to his or her other lineal descendants; and if such descendants are in the same degree of kindred to the intestate, they shall take such real property equally, or otherwise they shall take according to the right of representation. An interest taken hereunder shall be subject to the right of a surviving spouse as provided in section 3.

"SEC. 3. The surviving spouse of any Indian who dies leaving any interest in trust or restricted land within the Umatilla Reservation shall be entitled to obtain a one-half interest in all such trust or restricted interests in land during his or her lifetime.

"SEC. 4. If any Indian, who leaves any interest in trust or restricted land within the Umatilla Reservation, makes provisions for his or her surviving spouse by an approved will, such surviving spouse shall have an election whether to take the provisions as made in such will or to take the interest as set forth in section 3 of this Act, but such surviving spouse shall not be entitled to both unless it plainly appears by the will to have been so intended by the testator. When any surviving spouse is entitled to an election under this section, he or she shall be deemed to have elected to take the provisions as made in such will unless, at or prior to the first hearing to probate the will, he or she has elected to take under section 3 of this Act and not under the will.

"SEC. 5. The provisions of this Act shall apply to all estates of decedents who die on or after the date of enactment of this Act [Apr. 18, 1978]."

§ 464. Transfer of restricted Indian lands or shares in assets of Indian tribes or corporation; exchange of lands

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 463b, 464, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 466. Indian forestry units; rules and regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 467. New Indian reservations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 468. Allotments or holdings outside of reservations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 469. Indian corporations; appropriation for organizing

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 470. Revolving fund; appropriation for loans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 671, 674, 676, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 471. Vocational and trade schools; appropriation for tuition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474,

475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 472. Standards for Indians appointed to Indian Office

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 472a, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461, 2011 of this title; title 5 section 8336; title 43 section 1615.

§ 472a. Indian preference laws applicable to Bureau of Indian Affairs and Indian Health Service positions

(a) Establishment of retention categories for purposes of reduction-in-force procedures

For purposes of applying reduction-in-force procedures under subsection (a) of section 3502 of title 5 with respect to positions within the Bureau of Indian Affairs and the Indian Health Service, the competitive and excepted service retention registers shall be combined, and any employee entitled to Indian preference who is within a retention category established under regulations prescribed under such subsection to provide due effect to military preference shall be entitled to be retained in preference to other employees not entitled to Indian preference who are within such retention category.

(b) Reassignment of employees other than to positions in higher grades; authority to make determinations respecting

(1) The Indian preference laws shall not apply in the case of any reassignment within the Bureau of Indian Affairs or within the Indian Health Service (other than to a position in a higher grade) of an employee not entitled to Indian preference if it is determined that under the circumstances such reassignment is necessary—

(A) to assure the health or safety of the employee or of any member of the employee's household;

(B) in the course of a reduction in force; or

(C) because the employee's working relationship with a tribe has so deteriorated that the employee cannot provide effective service for such tribe or the Federal Government.

(2) The authority to make any determination under subparagraph (A), (B), or (C) of paragraph (1) is vested in the Secretary of the Interior with respect to the Bureau of Indian Affairs and the Secretary of Health, Education, and Welfare with respect to the Indian Health Service, and, notwithstanding any other provision of law, the Secretary involved may not delegate such authority to any individual other than an Under Secretary or Assistant Secretary of the respective department.

(c) Waiver of applicability in personnel actions; scope, procedures, etc.

(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action respecting an employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action.

(2) The provisions of section 8336(j) of title 5 shall not apply to any individual who has accepted a waiver with respect to a personnel action pursuant to paragraph (1) of this subsection or to section 2011(f) of this title.

(d) Annual report respecting Indians qualifying for preference positions

The Secretaries of the Interior and Health, Education, and Welfare shall each submit to the Congress a report following the close of each fiscal year with respect to the actions which they took in such fiscal year to recruit and train Indians to qualify such Indians for positions which are subject to preference under the Indian preference laws. Such report shall also include information as to the grade levels and occupational classifications of Indian and non-Indian employees in the Bureau of Indian Affairs and the Indian Health Service.

(e) Placement of non-Indian employees in other Federal positions; assistance of Office of Personnel Management; cooperation of other Federal agencies; reporting requirements

(1) The Office of Personnel Management shall provide all appropriate assistance to the Bureau of Indian Affairs and the Indian Health Service in placing non-Indian employees of such agencies in other Federal positions. All other Federal agencies shall cooperate to the fullest extent possible in such placement efforts.

(2) The Secretaries of the Interior and Health, Education, and Welfare, and the Director of the Office of Personnel Management shall each submit a report to Congress following the close of each fiscal year with respect to the actions which they took in such fiscal year to place non-Indian employees of the Bureau of Indian Affairs and the Indian Health Service in other Federal positions.

(f) Definitions

For purposes of this section—

(1) The term "tribal organization" means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of title 43); or

(B) in connection with any personnel action referred to in subsection (c)(1) of this section, any legally established organization of Indians which is controlled, sanctioned, or chartered by a governing body referred to in subparagraph (A) of this paragraph and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(2) The term "Indian preference laws" means section 472 of this title or any other provision of law granting a preference to Indians in promotions and other personnel actions.

(3) The term "Bureau of Indian Affairs" means (A) the Bureau of Indian Affairs and (B) all other organizational units in the De-

partment of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

(Pub. L. 96–135, § 2, Dec. 5, 1979, 93 Stat. 1057.)

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 473. Application of sections

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 474. Continuation of allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 475. Claims or suits of Indian tribes against United States; rights unimpaired

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 476. Organization of Indian tribes; constitution and bylaws; special election

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 70n, 324, 390, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 711d, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 16 section 803; title 43 section 1615.

§ 477. Incorporation of Indian tribes; charter; ratification by election

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 478. Acceptance of sections 461 to 479 optional

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

§ 479. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 480, 482, 483, 488, 503, 504, 507, 704, 711a, 723, 725, 728, 758, 823, 903a, 903c, 935, 1300f, 1461 of this title; title 43 section 1615.

SUBCHAPTER VIII—INDIANS IN OKLAHOMA: PROMOTION OF WELFARE

CROSS REFERENCES

Modoc Tribe and its members, applicability of this subchapter to, see section 861a of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 324, 443, 470a, 480, 482, 483, 861a, 1112, 1461 of this title.

§ 503. Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861a of this title.

SUBCHAPTER XIII—KLAMATH TRIBE: TERMINATION OF FEDERAL SUPERVISION

CROSS REFERENCES

Modoc Tribe and its members, inapplicability of this subchapter to, see section 861a of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 861a of this title.

§ 564a. Definitions

CROSS REFERENCES

Modoc Tribe and its members, inapplicability of this subchapter to, see section 861a of this title.

§ 564e. Sale of tribal property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564c, 564d, 564w–1, 861a of this title.

§ 564t. Indian claims unaffected

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861a of this title.

SUBCHAPTER XVII—YAKIMA TRIBES

§ 609c. Disbursement of minor's share of judgement funds

(a) Definitions

For purposes of this section and section 609c–1 of this title, the term—

(1) "tribe" means the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation;

(2) "tribal governing body" means the governing body of a tribe or a committee of the members of such body designated by such body for purposes of this section and section 609c–1 of this title;

(3) "Secretary" means the Secretary of the Interior acting through (unless otherwise determined by the Secretary) the Superintendent of the Bureau of Indian Affairs Agency serving the tribe involved;

(4) "minor" means a member of a tribe, or descendant of a member of a tribe, who has not attained the age of eighteen years and who has a minor's share;

(5) "minor's share" means the per capita share of a judgement award, and the investment income accruing thereto, which is held in trust by the Secretary for a minor; and

(6) "parent" means the biological or adoptive parent or parents, or other legal guardian, of a minor.

(b) Disbursement to parent of minor

Notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466) [25 U.S.C. 1401 et seq.], the Act of March 12, 1968 (82 Stat. 47), or any other law, or any regulation or plan promulgated pursuant thereto, the minor's share of judgment funds heretofore or hereafter awarded by the Indian Claims Commission or the United States Court of Claims to a tribe may be disbursed to a parent of such minor pursuant to this section and section 609c–1 of this title.

(c) Disbursements under plan for best interest of minor

The minor's share of judgment funds may be disbursed in such amounts deemed necessary by such parent for the best interest of the minor for the minor's health, education, welfare, and emergencies under a plan governing such funds for each minor (or a plan governing funds of all minors in a family) approved by the Secretary and the tribal governing body of the minor's tribe.

(d) Monthly reports

The Secretary shall provide a monthly report to each tribal governing body which has approved one or more plans pursuant to subsection (c) of this section. Each such report shall include the amount and purpose of every disbursement made during each month under such plans.

(Pub. L. 95–433, § 1, Oct. 10, 1978, 92 Stat. 1047.)

REFERENCES IN TEXT

The Act of October 19, 1973 (87 Stat. 466), referred to in subsec. (b), is Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, as amended, which is classified generally to chapter 16 (§ 1401 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Act of March 12, 1968 (82 Stat. 47), referred to in subsec. (b), probably means Pub. L. 90–267, Mar. 13, 1968, 82 Stat. 47, which amended sections 635 to 635b and 635d to 635i of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 609c–1 of this title.

§ 609c–1. Tax exemption; eligibility for Federal assistance without regard to payments

Any part of any of the judgment funds referred to in section 609c of this title that may be distributed per capita to, or held in trust for the benefit of, the members of a tribe, including minor's shares, shall not be subject to Federal or State income tax, and the per capita payment shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act [42 U.S.C. 301 et seq.], or any other Federal or federally assisted program.

(Pub. L. 95–433, § 2, Oct. 10, 1978, 92 Stat. 1047.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 609c of this title.

SUBCHAPTER XXI—NAVAJO AND HOPI TRIBES: REHABILITATION

§ 640a. Navajo Community College; purpose

It is the purpose of sections 640a to 640c–1 of this title to assist the Navajo Tribe of Indians in providing education to the members of the tribe and other qualified applicants through a community college, established by that tribe, known as the Navajo Community College.

(Pub. L. 92–189, § 2, Dec. 15, 1971, 85 Stat. 646.)

CODIFICATION

Section is set out in this supplement to reflect the enactment of section 640c–1 of this title, which changes the translation of "this Act", meaning Pub. L. 92–189, from "sections 640a to 640c of this title" to "sections 640a to 640c–1 of this title".

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–471, title II, § 201, 92 Stat. 1329, provided that: "This title [enacting section 640c–1 of this title, amending section 640c of this title, and enacting provisions set out as notes under this section and section 640c–1 of this title] may be cited as the "Navajo Community College Assistance Act of 1978'."

SHORT TITLE

Section 1 of Pub. L. 92–189 provided: "That this Act [enacting sections 640a to 640c–1 of this title] may be cited as the "Navajo Community College Act'."

EXPANSION OF NAVAJO COMMUNITY COLLEGE

Pub. L. 95–471, title II, § 202, 92 Stat. 1329, provided that:

"The Congress after careful study and deliberation, finds that—

"(1) the Navajo Tribe constitutes the largest American Indian tribe in the United States;

"(2) the Navajo Tribe has, through its duly constituted tribal council and representatives, established a community college within the boundaries of the reservation;

"(3) the population of the Navajo Tribe and the best area of the Navajo reservation requires that the Navajo Community College expand to better serve the needs of such population; and

"(4) the Congress has already recognized the need for this institution by the passage of the Navajo Community College Act [sections 640a to 640c–1 of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 640c–1 of this title.

§ 640b. Grants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 640a, 640c–1 of this title.

§ 640c. Study of facilities needs

(a) The Secretary shall conduct a detailed survey and study of the academic facilities needs of the Navajo Community College, and shall report to the Congress not later than August 1, 1979, the results of such survey and study. Such report shall include any recommendations or views submitted by the governing body of such College and by the governing body of the Navajo tribe, and shall include detailed recommendations by the Secretary as to the number, type, and cost of academic facilities which are required, ranking each such required facility by relative need.

(b) Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after October 17, 1978.

(As amended Pub. L. 95–471, title II, § 203(a), Oct. 17, 1978, 92 Stat. 1330.)

AMENDMENTS

1978—Pub. L. 95–471 substituted provisions relating to a detailed survey, study, and report and funding for this section for provisions authorizing appropriations for grants under sections 640a to 640c of this title.

DEFINITIONS

For definition of terms used in this section, see section 1801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 640a, 640c–1 of this title.

§ 640c–1. Authorization of appropriations

(a)(1) For the purpose of making construction grants under sections 640a to 640c–1 of this title, there are hereby authorized to be appropriated such sums as may be necessary for the fiscal year beginning October 1, 1979, and for the two succeeding fiscal years.

(2) Sums appropriated pursuant to this subsection for construction shall, unless otherwise provided in appropriations Acts, remain available until expended.

(b)(1) There is further authorized to be appropriated for grants to the Navajo Community College, for any fiscal year beginning on or after October 1, 1979, for operation and maintenance of the college, an amount equal to $4,000 for each full-time equivalent Indian student (determined in accordance with section 1801(7) of this title) which the Secretary of the Interior estimates will be in attendance at such college during such year.

(2) No grant under this subsection shall exceed—

(A) $4,000 for each such full-time equivalent Indian student in actual attendance at such college; or

(B) the total annual cost of the education program provided by such college,

whichever is less.

(3) The Secretary shall make payments, pursuant to grants under this subsection, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

(c) The Secretary of the Interior is authorized and directed to establish by rule procedures to insure that all funds appropriated under sections 640a to 640c–1 of this title are properly identified for grants to the Navajo Community College and that such funds are not commingled with appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

(Pub. L. 92–189, § 5, as added Pub. L. 95–471, title II, § 203(a), Oct. 17, 1978, 92 Stat. 1330.)

FISCAL YEAR BEGINNING OCTOBER 1, 1978

Section 203(b) of Pub. L. 95–471 provided that: "Nothing in this title or in the amendment made by this title [enacting this section, amending section 640c of this title, and enacting provisions set out as notes under this section and section 640a of this title] shall be deemed to authorize appropriations for the fiscal year beginning October 1, 1978."

DEFINITIONS

For definition of terms used in this section, see section 1801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 640a of this title.

SUBCHAPTER XXII—NAVAJO AND HOPI TRIBES; SETTLEMENT OF RIGHTS AND INTERESTS

§ 640d–24. Authorization of appropriations; availability of sums until expended

(a)(1) For the purpose of carrying out the provisions of section 640d–14 of this title, there is hereby authorized to be appropriated not to exceed $31,500,000.

[*See main edition for text of* (2) *to* (4)]

(5) There is hereby authorized to be appropriated annually not to exceed $1,000,000 for the expenses of the Commission.

[*See main edition for text of* (6); (b)]

(As amended Pub. L. 96–40, July 30, 1979, 93 Stat. 318.)

AMENDMENTS

1979—Subsec. (a)(5). Pub. L. 96–40 substituted "$1,000,000" for "$500,000".

SUBCHAPTER XXX—WESTERN OREGON INDIANS: TERMINATION OF FEDERAL SUPERVISION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 711a of this title.

SUBCHAPTER XXX-A—SILETZ INDIAN TRIBE: RESTORATION OF FEDERAL SUPERVISION

§ 711. Definitions

For the purposes of this subchapter—

(1) the term "tribe" means the Confederated Tribes of Siletz Indians of Oregon;

(2) the term "Secretary" means the Secretary of the Interior or his authorized representative;

(3) the term "Interim Council" means the council elected pursuant to section 711c of this title;

(4) the term "member", when used with respect to the tribe, means a person enrolled on the membership roll of the tribe, as provided in section 711b of this title; and

(5) the term "final membership roll" means the final membership roll of the tribe published on July 20, 1956, on pages 5454–5462 of volume 21 of the Federal Register.

(Pub. L. 95–195, § 2, Nov. 18, 1977, 91 Stat. 1415.)

Short Title

Section 1 of Pub. L. 95–195 provided: "That this Act [enacting this subchapter] may be cited as the 'Siletz Indian Tribe Restoration Act' ".

§ 711a. Federal recognition

(a) Extension; laws applicable; eligibility for Federal services and benefits

Federal recognition is extended to the tribe, and the provisions of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, except as inconsistent with specific provisions of this subchapter, are made applicable to the tribe and the members of the tribe. The tribe and the members of the tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes. Notwithstanding any provision to the contrary in any law establishing such services or benefits, eligibility of the tribe and its members for such Federal services and benefits shall become effective upon November 18, 1977, without regard to the existence of a reservation for the tribe or the residence of members of the tribe on a reservation.

(b) Restoration of rights and privileges

Except as provided in subsection (c) of this section, all rights and privileges of the tribe and of members of the tribe under any Federal treaty, Executive order, agreement, or statute, or under any other authority, which were diminished or lost under subchapter XXX of this chapter, are hereby restored, and such subchapter shall be inapplicable to the tribe and to members of the tribe after November 18, 1977.

(c) Hunting, fishing or trapping rights and tribal reservations not restored

This subchapter shall not grant or restore any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, to the tribe or any member of the tribe, nor shall it be construed as granting, establishing, or restoring a reservation for the tribe.

(d) Effect on property rights or obligations, contractual rights or obligations, or obligations for taxes

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

(Pub. L. 95–195, § 3, Nov. 18, 1977, 91 Stat. 1415.)

References in Text

Subchapter XXX [§ 691 et seq.] of this chapter, referred to in subsec. (b), was in the original a reference to the Act of Aug. 13, 1954 (68 Stat. 724).

§ 711b. Membership roll

(a) Opening; duty of Secretary, Interim Council, and tribal officials

The final membership roll is declared open. The Secretary, the Interim Council, and tribal officials under the tribal constitution and bylaws shall take such measures as will insure the continuing accuracy of the membership roll.

(b) Prerequisites for inclusion

(1) Until after the initial election of tribal officers under the tribal constitution and bylaws, a person shall be a member of the tribe and his name shall be placed on the membership roll if he is living and if—

(A) his name is listed on the final membership roll;

(B) he was entitled on August 13, 1954, to be on the final membership roll but his name was not listed on that roll; or

(C) he is a descendant of a person specified in subparagraph (A) or (B) and possesses at least one-fourth degree of blood of members of the tribe or their Siletz Indian ancestors.

(2) After the initial election of tribal officials under the tribal constitution and bylaws, the provisions of the tribal constitution and bylaws shall govern membership in the tribe.

(c) Verification of descendancy, age, and blood; appeal; finality of determination; possession of enrollment records and materials

(1) Before election of the Interim Council, verification of descendancy, age, and blood shall be made upon oath before the Secretary and his determination thereon shall be final.

(2) After election of the Interim Council and before the initial election of the tribal officials, verification of descendancy, age, and blood shall be made upon oath before the Interim Council, or its authorized representative. A member of the tribe, with respect to the inclusion of any name, and any person, with respect to the exclusion of his name, may appeal to the Secretary, who shall make a final determination of each such appeal within ninety days after an appeal has been filed with him. The determination of the Secretary with respect to an appeal under this paragraph shall be final.

(3) After the initial election of tribal officials, the provisions of the tribal constitution and bylaws shall govern the verification of any requirements for membership in the tribe, and the Secretary and the Interim Council shall de-

liver their records and files, and any other material relating to enrollment matters, to the tribal governing body.

(d) Franchisement

For purposes of sections 711c and 711d of this title, a member who is eighteen years of age or older is entitled and eligible to be given notice of, attend, participate in, and vote at, general council meetings and to nominate candidates for, to run for any office in, and to vote in, elections of members to the Interim Council and to other tribal councils.

(Pub. L. 95–195, § 4, Nov. 18, 1977, 91 Stat. 1416.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 711, 711c, 711d of this title.

§ 711c. Interim Council

(a) Nomination and election of members; notice; meetings; ballot requirements; approval by Secretary

Within forty-five days after November 18, 1977, the Secretary shall announce the date of a general council meeting of the tribe to nominate candidates for election to the Interim Council. Such general council meeting shall be held within sixty days after November 18, 1977. Within forty-five days after such general council meeting the Secretary shall hold an election by secret ballot, absentee balloting to be permitted, to elect nine members of the tribe to the Interim Council from among the nominees submitted to him from such general council meeting. The Secretary shall assure that notice of the time, place, and purpose of such meeting and election shall be provided to members described in section 711b(d) of this title at least fifteen days before such general meeting and election. The ballot shall provide for write-in votes. The Secretary shall approve the Interim Council elected pursuant to this section if he is satisfied that the requirements of this section relating to the nominating and election process have been met. If he is not so satisfied, he shall hold another election under this section, with the general council meeting to nominate candidates for election to the Interim Council to be held within sixty days after such election.

(b) Powers of Council

The Interim Council shall represent the tribe and its members in the implementation of this subchapter and shall be the acting tribal governing body until tribal officials are elected pursuant to section 711d(c) of this title and shall have no powers other than those given to it in accordance with this subchapter. The Interim Council shall have full authority and capacity to receive grants from and to make contracts with the Secretary and the Secretary of Health, Education, and Welfare with respect to Federal services and benefits for the tribe and its members and to bind the tribal governing body as the successor in interest to the Interim Council for a period extending not more than six months after the date on which the tribal governing body takes office. Except as provided in the preceding sentence, the Interim Council shall have no power or authority after the time when the duly-elected tribal governing body takes office: *Provided*, That no authority to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Council vacancies; notice; meeting; election

Within thirty days after receiving notice of a vacancy on the Interim Council, the Interim Council shall hold a general council meeting for the purpose of electing a person to fill such vacancy. The Interim Council shall provide notice of the time, place, and purpose of such meeting and election to members described in section 711b(d) of this title at least ten days before such general meeting and election. The person nominated to fill such vacancy at the general council meeting who received the highest number of votes in the election shall fill such vacancy.

(Pub. L. 95–195, § 5, Nov. 18, 1977, 91 Stat. 1416.)

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 711, 711b of this title.

§ 711d. Tribal constitution and bylaws

(a) Election; time and procedure

Upon the written request of the Interim Council, the Secretary shall conduct an election by secret ballot, pursuant to the provisions of section 476 of this title, for the purpose of adopting a constitution and bylaws for the tribes. The election shall be held within sixty days after the Secretary has—

(1) reviewed and updated the final membership roll for accuracy, in accordance with section 711b(a), (b)(1), and (c)(1) of this title,

(2) made a final determination of all appeals filed under section 711b(c)(2) of this title, and

(3) published in the Federal Register a certification copy of the membership roll of the tribe.

(b) Pre-election distribution of proposed constitution and bylaws and brief impartial description; consultation by Interim Council with members of tribe

The Interim Council shall draft and distribute to each member described in section 711b(d) of this title, no later than thirty days before the election under subsection (a) of this section, a copy of the proposed constitution and bylaws of the tribe, as drafted by the Interim Council, along with a brief, impartial description of the proposed constitution and bylaws. The members of the Interim Council may freely consult with members of the tribe concerning the text and description of the constitution and bylaws, except that such consultation may not be carried on within fifty feet of the polling places on the date of the election.

(c) Majority vote necessary for adoption of constitution and bylaws

In any election held pursuant to subsection (a) of this section, the vote of a majority of those actually voting shall be necessary and sufficient for the adoption of a tribal constitution and bylaws.

(d) Election of tribal officials provided for in constitution and bylaws; ballot requirements

Not later than one hundred and twenty days after the tribe adopts a constitution and bylaws, the Interim Council shall conduct an election by secret ballot for the purpose of electing the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted.

(Pub. L. 95-105, § 6, Nov. 18, 1977, 91 Stat. 1417.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 711b, 711c, 711e of this title.

§ 711e. Reservation

(a) Establishment

Any reservation for the tribe shall be established by an Act of Congress enacted after November 18, 1977.

(b) Plan; negotiation with tribe; approval by tribal officials; submittal to Congress

Inasmuch as the reservation of the tribe has been terminated, the Secretary shall negotiate with the tribe, or with representatives of the tribe chosen by the tribe, concerning the establishment of a reservation for the tribe and shall, in accordance with subsections (c) and (d) of this section and within two years after November 18, 1977, develop a plan for the establishment of a reservation for the tribe. Upon approval of such plan by the tribal officials elected under the tribal constitution and bylaws adopted pursuant to section 711d of this title, the Secretary shall submit such plan, in the form of proposed legislation, to the Congress.

(c) Notification and consultation

To assure that legitimate State and local interests are not prejudiced by the creation of a reservation for the tribe, the Secretary, in developing a plan under subsection (b) of this section for the establishment of a reservation, shall notify and consult with all appropriate officials of the State of Oregon, all appropriate local governmental officials in the State of Oregon and any other interested parties. Such consultation shall include the following subjects:

(1) the size and location of the reservation;

(2) the effect the establishment of the reservation would have on State and local tax revenues;

(3) the criminal and civil jurisdiction of the State of Oregon with respect to the reservation and persons on the reservation;

(4) hunting, fishing, and trapping rights of the tribe and members of the tribe, on the reservation;

(5) the provision of State and local services to the reservation and to the tribe and members of the tribe on the reservation; and

(6) the provision of Federal services to the reservation and to the tribe and members of the tribe and the provision of services by the tribe to members of the tribe.

(d) Provisions of plan

Any plan developed under this section for the establishment of a reservation for the tribe shall provide that—

(1) any real property transferred by the tribe or members of the tribe to the Secretary shall be taken in the name of the United States in trust for the benefit of the tribe and shall be the reservation for the tribe;

(2) the establishment of such a reservation will not grant or restore to the tribe or any member of the tribe any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, on such reservation;

(3) the Secretary shall not accept any real property in trust for the benefit of the tribe or its members unless such real property is located within Lincoln County, State of Oregon;

(4) any real property taken in trust by the Secretary for the benefit of the tribe or its members shall be subject to all rights existing at the time such property is taken in trust, including liens, outstanding Federal, State, and local taxes, mortgages, outstanding indebtedness of any kind, easements, and all other obligations, and shall be subject to foreclosure and sale in accordance with the laws of the State of Oregon;

(5) the transfer of any real property to the Secretary in trust for the benefit of the tribe or its members shall be exempt from all Federal, State, and local taxation, and all such real property shall, as of the date of such transfer, be exempt from Federal, State, and local taxation; and

(6) the State of Oregon shall have civil and criminal jurisdiction with respect to the reservation and persons on the reservation in accordance with section 1360 of title 28 and section 1162 of title 18.

(e) Statement

The Secretary shall append to the plan a detailed statement describing the manner in which the notification and consultation prescribed by subsection (c) of this section was carried out and shall include any written comments with respect to the establishment of a reservation for the tribe submitted to the Secretary by State and local officials and other interested parties in the course of such consultation.

(Pub. L. 95-195, § 7, Nov. 18, 1977, 91 Stat. 1418.)

§ 711f. Rules and regulations

The Secretary may make such rules and regulations as are necessary to carry out the purposes of this subchapter.

(Pub. L. 95-195, § 8, Nov. 18, 1977, 91 Stat. 1419.)

SUBCHAPTER XXXV—WYANDOTTE TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§§ 791 to 807. Repealed. Pub. L. 95-281, § 1(b)(1), May 15, 1978, 92 Stat. 246

Section 791, act Aug. 1, 1956, ch. 843, § 1, 70 Stat. 893, set out purpose of sections 791 to 807 of this title as the termination of Federal supervision and services for the tribe.

Section 792, act Aug. 1, 1956, ch. 843, § 2, 70 Stat. 893, defined the terms "tribe", "Secretary", "lands", and "tribal property".

Section 793, act Aug. 1, 1956, ch. 843, § 3, 70 Stat. 893, set forth provisions relating to preparation and publication of the membership roll.

Section 794, act Aug. 1, 1956, ch. 843, § 4, 70 Stat. 893, restricted personal property rights upon publication of the final membership roll.

Section 795, act Aug. 1, 1956, ch. 843, § 5, 70 Stat. 893, set forth provisions relating to procedures for transfer of tribal property.

Section 796, act Aug. 1, 1956, ch. 843, § 6, 70 Stat. 894, set forth provisions relating to transfers of individual property to members of the tribe.

Section 797, act Aug. 1, 1956, ch. 843, § 7, 70 Stat. 894, provided for applicability of probate laws to property of deceased members.

Section 798, act Aug. 1, 1956, ch. 843, § 8, 70 Stat. 895, set forth provisions relating to applicability of Federal or State tax laws to property distributions.

Section 799, act Aug. 1, 1956, ch. 843, § 9, 70 Stat. 895, provided for protection by the Secretary of minors, etc., prior to transfers or removal of restrictions on property.

Section 800, act Aug. 1, 1956, ch. 843, § 10, 70 Stat. 895, provided for availability of tribal funds for advances or expenditures.

Section 801, act Aug. 1, 1956, ch. 843, § 11, 70 Stat. 895, authorized the Secretary to execute patents, deeds, etc., as necessary for implementation of provisions for termination of supervision.

Section 802, act Aug. 1, 1956, ch. 843, § 12, 70 Stat. 895, provided for nonabrogation by termination of supervision of any valid lease, permit, license. etc.

Section 803, act Aug. 1, 1956, ch. 843, § 13, 70 Stat. 896, set forth provisions relating to procedures for termination of Federal trust over tribal and individual property.

Section 804, act Aug. 1, 1956, ch. 843, § 14, 70 Stat. 896, provided for revocation of tribal corporate charter and termination of Federal powers over tribe.

Section 805, act Aug. 1, 1956, ch. 843, § 15. 70 Stat. 896, provided for termination of supervision as not affecting prior claims filed by the tribe against the United States.

Section 806, act Aug. 1, 1956, ch. 843, § 16, 70 Stat. 896, provided for nonabrogation by termination of supervision of tribal or individual water rights.

Section 807, act Aug. 1, 1956, ch. 843, § 17, 70 Stat. 896, authorized the Secretary to issue rules and regulations and hold referendums for implementation of provisions relating to termination of supervision.

Repeal of Inconsistent Laws

Section 18 of act Aug. 1, 1956, which related to repeal of inconsistent Acts, etc., was repealed by Pub. L. 95-281, § 1(b)(1), May 15, 1978, 92 Stat. 246.

Separability of Provisions

Section 19 of act Aug. 1, 1956, which provided for validity of remainder of act of Aug. 1, 1956, in event of determination of invalidity of any part of such act, was repealed by Pub. L. 95-281, § 1(b)(1), May 15, 1978, 92 Stat. 246.

SUBCHAPTER XXXVI—PEORIA TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§§ 821 to 826. Repealed. Pub. L. 95-281, § 1(b)(2), May 15, 1978, 92 Stat. 246

Section 821, act Aug. 2, 1956, ch. 881, § 1, 70 Stat. 937, set out purpose of sections 821 to 826 of this title as the termination of Federal supervision and services for the tribe.

Section 822, act Aug. 2, 1956, ch. 881, § 2, 70 Stat. 937, set forth provisions relating to removal of restrictions on sales or encumbrances and nature of title passed.

Section 823, act Aug. 2, 1956, ch. 881. § 3, 70 Stat. 937, set forth provisions relating to termination of Federal trust and services.

Section 824, act Aug. 2, 1956, ch. 881, § 4, 70 Stat. 937, provided for revocation of tribal corporate charter and termination of Federal powers over tribe.

Section 825, act Aug. 2, 1956, ch. 881, § 5, 70 Stat. 938, provided for termination of supervision as not affecting prior claims filed by the tribe against the United States.

Section 826, act Aug. 2, 1956, ch. 881, § 6, 70 Stat. 938, set forth provisions relating to preparation and publication of the membership roll.

SUBCHAPTER XXXVII—OTTAWA TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§§ 841 to 853. Repealed. Pub. L. 95-281, § 1(b)(3), May 15, 1978, 92 Stat. 246

Section 841, act Aug. 3, 1956, ch. 909, § 1, 70 Stat. 963, set out purpose of sections 841 to 853 of this title as the termination of Federal supervision and services for the tribe.

Section 842, act Aug. 3, 1956, ch. 909, § 2, 70 Stat. 963, set forth provisions relating to transfers of individual property to members of the tribe.

Section 843, act Aug. 3, 1956, ch. 909, § 3, 70 Stat. 963, provided for applicability of probate laws to property of deceased members.

Section 844, act Aug. 3, 1956, ch. 909, § 4, 70 Stat. 964, provided for protection by Secretary of minors, etc., prior to transfers or removal of restrictions on property.

Section 845, act Aug. 3, 1956, ch. 909, § 5, 70 Stat. 964, provided for availability of tribal funds for advances or expenditures.

Section 846, act Aug. 3, 1956, ch. 909, § 6, 70 Stat. 964, authorized the Secretary to execute patents, deeds, etc., as necessary for implementation of provisions for termination of supervision.

Section 847, act Aug. 3, 1956, ch. 909, § 7, 70 Stat. 964, provided for nonabrogation by termination of supervision of any valid lease, permit, license, etc.

Section 848, act Aug. 3, 1956, ch. 909, § 8, 70 Stat. 964, set forth provisions relating to procedures for termination of Federal trust and services for the tribe and individual members.

Section 849, act Aug. 3, 1956, ch. 909, § 9, 70 Stat. 965, provided for revocation of tribal corporate charter and termination of Federal powers over tribe.

Section 850, act Aug. 3, 1956, ch. 909, § 10, 70 Stat. 965, provided for termination of supervision as not affecting prior claims filed by the tribe against the United States.

Section 851, act Aug. 3, 1956, ch. 909, § 11, 70 Stat. 965, provided for nonabrogation by termination of supervision of tribal or individual water rights.

Section 852, act Aug. 3, 1956, ch. 909, § 12, 70 Stat. 965, authorized the Secretary to issue rules and regulations and hold referendums for implementation of provisions relating to termination of supervision.

Section 853, act Aug. 3, 1956, ch. 909, § 15, 70 Stat. 965, set forth provisions relating to preparation and publication of membership roll.

REPEAL OF INCONSISTENT LAWS

Section 13 of act Aug. 3, 1956, which related to repeal of inconsistent Acts, etc., was repealed by Pub. L. 95-281, § 1(b)(3), May 15, 1978, 92 Stat. 246.

SEPARABILITY OF PROVISIONS

Section 14 of act Aug. 3, 1956, which provided for validity of remainder of act of Aug. 3, 1956, in event of determination of invalidity of any part of such act, was repealed by Pub. L. 95-281, § 1(b)(3), May 15, 1978, 92 Stat. 246.

SUBCHAPTER XXXVII–A—WYANDOTTE, PEORIA, OTTAWA, AND MODOC TRIBES OF OKLAHOMA: RESTORATION OF FEDERAL SUPERVISION [NEW]

§ 861. Federal recognition of Wyandotte, Ottawa, and Peoria Tribes

(a) Extension or confirmation

Federal recognition is hereby extended or confirmed with respect to the Wyandotte Indian Tribe of Oklahoma, the Ottawa Indian Tribe of Oklahoma, and the Peoria Indian Tribe of Oklahoma, the provisions of the Acts repealed by subsection (b) of this section notwithstanding.

(b) Repeal of provisions terminating Federal supervision

The following Acts are hereby repealed:

(1) the Act of August 1, 1956 (70 Stat. 893; 25 U.S.C. 791–807), relating to the Wyandotte Tribe;

(2) the Act of August 2, 1956 (70 Stat. 937; 25 U.S.C. 821–826), relating to the Peoria Tribe; and

(3) the Act of August 3, 1956 (70 Stat. 963; 25 U.S.C. 841–853), relating to the Ottawa Tribe.

(c) Tribal rights and privileges; reinstatement and continuation

There are hereby reinstated all rights and privileges of each of the tribes described in subsection (a) of this section and their members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to the Act relating to them which is repealed by subsection (b) of this section. Nothing contained in this subchapter shall diminish any rights or privileges enjoyed by each of such tribes or their members now or prior to enactment of such Act, under Federal treaty, statute, or otherwise, which are not inconsistent with the provisions of this subchapter.

(d) Continuation of property or contractual rights or obligations and tax obligations

Except as specifically provided in this subchapter, nothing contained in this subchapter shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligation for taxes already levied.

(Pub. L. 95-281, § 1, May 15, 1978, 92 Stat. 246.)

REFERENCES IN TEXT

The Act of August 1, 1956, referred to in subsec. (b)(1), is act Aug. 1, 1956, ch. 843, 70 Stat. 893, which was classified generally to subchapter XXXV (§ 791 et seq.) of this chapter prior to its repeal by subsec. (b)(1) of this section. For complete classification of this Act to the Code, see Tables.

The Act of August 2, 1956, referred to in subsec. (b)(2), is act Aug. 2, 1956, ch. 881, 70 Stat. 937, which was classified generally to subchapter XXXVI (§ 821 et seq.) of this chapter prior to its repeal by subsec. (b)(2) of this section. For complete classification of this Act to the Code, see Tables.

The Act of August 3, 1956, referred to in subsec. (b)(3), is act Aug. 3, 1956, ch. 909, 70 Stat. 963, which was classified to subchapter XXXVII (§ 841 et seq.) of this chapter prior to its repeal by subsec. (b)(3) of this section. For complete classification of this Act to the Code, see Tables.

This subchapter, referred to in subsecs. (c) and (d), in the original read "this Act", meaning Pub. L. 95-281, May 15, 1978, 92 Stat. 246, which enacted this subchapter and repealed subchapter XXXV (§ 791 et seq.), subchapter XXXVI (§ 821 et seq.), and subchapter XXXVII (§ 841 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 861a. Organization of tribes

(a) Modoc Tribe; extension of Federal recognition and assistance; applicability of provisions relating to Klamath Tribe; membership requirements

(1) The Modoc Indian Tribe of Oklahoma is hereby recognized as a tribe of Indians residing in Oklahoma and the provisions of subchapter VIII of this chapter are hereby extended to such tribe and its members. The Secretary of the Interior shall promptly offer the said Modoc Tribe assistance to aid them in organizing under section 503 of this title.

(2) The provisions of subchapter XIII of this chapter hereafter shall not apply to the Modoc Tribe of Oklahoma or its members except for any right to share in the proceeds of any claim against the United States as provided in sections 564e and 564t of this title.

(3) The Modoc Indian Tribe of Oklahoma shall consist of those Modoc Indians who are direct lineal descendants of those Modocs removed to Indian territory (now Oklahoma) in November 1873, and who did not return to Klamath, Oregon, pursuant to the Act of March 9, 1909 (35 Stat. 751), as determined by the Secretary of the Interior, and the descendants of such Indians who otherwise meet the membership requirements adopted by the tribe.

(b) Ottawa and Peoria Tribes; extension of Federal assistance

The Secretary of the Interior shall promptly offer the Ottawa Tribe of Oklahoma and the Peoria Tribe of Oklahoma assistance to aid them in reorganizing under section 503 of this title, and subchapter VIII of this chapter is reextended to them and their members by this subchapter.

(c) Wyandotte Tribe; confirmation of validity of organization and continuation

The validity of the organization of the Wyandotte Indian Tribe of Oklahoma under section 503 of this title, and the continued application of subchapter VIII of this chapter to such tribe and its members is hereby confirmed.

(Pub. L. 95-281, § 2, May 15, 1978, 92 Stat. 246.)

REFERENCES IN TEXT

Subchapter VIII [§ 501 et seq.] of this chapter, referred to in subsecs. (a)(1), (b), and (c), was in the

original a reference to Act of June 26, 1936, as amended (49 Stat. 1967).

Subchapter XIII [§ 564 et seq.] of this chapter, referred to in subsec. (a)(2), was in the original a reference to Act of August 13, 1954 (68 Stat. 718).

The Act of March 9, 1909 (35 Stat. 751), referred to in subsec. (a)(3), probably means the act of Mar. 3, 1909, ch. 253, 35 Stat. 751, which was not classified to the Code.

This subchapter, referred to in subsec. (b), in the original read "this Act", meaning Pub. L. 95-281, May 15, 1978, 92 Stat. 246, which enacted this subchapter and repealed subchapter XXXV (§ 791 et seq.), subchapter XXXVI (§ 821 et seq.), and subchapter XXXVII (§ 841 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 861b. Restoration of supervision as fulfilling other Federal statutory requirements

(a) Wyandotte, Peoria, and Ottawa Tribes; right or interest in tribal land

It is hereby declared that enactment of this subchapter fulfills the requirements of the first proviso in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921), with respect to the Wyandotte Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, and the Peoria Tribe of Oklahoma.

(b) Modoc Tribe; right or interest in tribal land

It is hereby declared that the organization of the Modoc Tribe of Oklahoma as provided in subsection (a) of this section shall fulfill the requirements of the second proviso in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921).

(c) Modoc Tribe; publication of notice in Federal Register of organization for purposes of compliance

Promptly after organization of the Modoc Tribe of Oklahoma, the Secretary of the Interior shall publish a notice of such fact in the Federal Register including a statement that such organization completes fulfillment of the requirements of the provisos in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921), and that the land described in section 1 of said Act is held in trust by the United States for the eight tribes named in said Act.

(Pub. L. 95-281, § 3, May 15, 1978, 92 Stat. 247.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 95-281, May 15, 1978, 92 Stat. 246, which enacted this subchapter and repealed subchapter XXXV (§ 791 et seq.), subchapter XXXVI (§ 821 et seq.), and subchapter XXXVII (§ 841 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

The Act of January 2, 1975 (88 Stat. 1920, 1921), referred to in text, is Pub. L. 93-588, Jan. 2, 1975, 88 Stat. 1920, and is not classified to this Code. The provisos in section 2 of such Act relate to right or interest in tribal land of the enumerated tribes.

§ 861c. Programs and services by United States; participation in by tribes as result of return to status as Indians

The Wyandotte, Ottawa, Peoria, and Modoc Tribes of Oklahoma and their members shall be entitled to participate in the programs and services provided by the United States to Indians because of their status as Indians, including, but not limited to, those under section 13 of this title, and for purposes of sections 2005 to 2005f of title 42. The members of such tribes shall be deemed to be Indians for which hospital and medical care was being provided by or at the expense of the Public Health Service on August 16, 1957.

(Pub. L. 95-281, § 4, May 15, 1978, 92 Stat. 247.)

SUBCHAPTER XLI—MENOMINEE TRIBE OF WISCONSIN: RESTORATION OF FEDERAL SUPERVISION

§ 903a. Federal recognition

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER LXXVII—PASCUA YAQUI TRIBE [NEW]

§ 1300f. Status of Pascua Yaqui Indian people

(a) Eligibility for services and assistance

The Pascua Yaqui Indian people who are members of the Pascua Yaqui Association, Incorporated, an Arizona corporation, or who hereafter become members of the Pascua Yaqui Tribe in accordance with section 1300f-2 of this title, are recognized as, and declared to be, eligible, on and after September 18, 1978, for the services and assistance provided to Indians because of their status as Indians by or through any department, agency, or instrumentality of the United States, or under any statute of the United States. For the purposes of section 2005a of title 42, the Pascua Yaqui Indians are to be considered as if they were being provided hospital and medical care by or at the expense of the Public Health Service on August 16, 1957.

(b) Administration of lands; application of other laws

The provisions of the Act of June 18, 1934 (48 Stat. 484), as amended, are extended to such members described in subsection (a) of this section.

(c) Receipt in trust by United States of land for Pascua Yaqui Tribe; criminal and civil jurisdiction

The Secretary of the Interior is directed, upon request of the Pascua Yaqui Association, Incorporated, and without monetary consideration, to accept on behalf of the United States and in trust for the Pascua Yaqui Tribe, the title to the real property conveyed by the United States to such association under the Act of October 8, 1964 (78 Stat. 1197), and such lands shall be held as Indian lands are held: *Provided*, That the State of Arizona shall exercise criminal and civil jurisdiction over such lands as if it had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79).

(Pub. L. 95-375, § 1(a)-(c), Sept. 18, 1978, 92 Stat. 712.)

REFERENCES IN TEXT

The Act of June 18, 1934, referred to in subsec. (b), is act June 18, 1934, ch. 576, 48 Stat. 484, as amended, which enacted sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title. For complete classification of this Act to the Code, see Tables.

The Act of October 8, 1964, referred to in subsec. (c), is act Oct. 8, 1964, Private Law 88-350, 78 Stat. 1196, which conveyed all right, title and interest of the United States in certain lands to the Pascua Yaqui Association, Inc., and was not classified to the Code.

The Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79), referred to in subsec. (c), is act Aug. 15, 1953, ch. 505, 67 Stat. 588, as amended, which enacted section 1162 of Title 18, Crimes and Criminal Procedure, section 1360 of Title 28, Judiciary and Judicial Procedure, and provisions set out as notes under section 1360 of Title 28. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1300f-1, 1300f-2 of this title.

§ 1300f-1. Tribal constitution and bylaws; review by Secretary; publication of documents and membership role in Federal Register

Within thirty months after September 18, 1978, the Pascua Yaqui Tribe shall adopt a constitution and bylaws or other governing documents and a membership roll. The Secretary of the Interior shall review such documents to insure that they comply with the provisions of this subchapter and shall publish such documents and membership roll in the Federal Register. Publication of such roll shall not affect or delay the immediate eligibility of the members of the Association under section 1300f of this title.

(Pub. L. 95-375, § 2, Sept. 18, 1978, 92 Stat. 712.)

§ 1300f-2. Membership of Tribe

For the purposes of section 1300f of this title, membership of the Pascua Yaqui Tribe shall consist of—

(A) the members of the Pascua Yaqui Association, Incorporated, as of September 18, 1978, who apply for enrollment in the Pascua Yaqui Tribe within one year from September 18, 1978 pursuant to the membership criteria and procedures provided for in the official governing documents of the Pascua Yaqui Tribe;

(B) all those persons of Yaqui blood who are citizens of the United States and who, within two years from September 18, 1978, apply for, and are admitted to, membership in the Association pursuant to article VII of the Articles of Incorporation of the Association; and

(C) direct lineal descendants of such persons, subject to any further qualifications as may be provided by the Tribe in its constitution and bylaws or other governing documents.

(Pub. L. 95-375, § 3, Sept. 18, 1978, 92 Stat. 712.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1300f of this title.

CHAPTER 15—CONSTITUTIONAL RIGHTS OF INDIANS

SUBCHAPTER I—GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 5307.

CHAPTER 16—DISTRIBUTION OF JUDGMENT FUNDS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 609c of this title.

CHAPTER 17—FINANCING ECONOMIC DEVELOPMENT OF INDIANS AND INDIAN ORGANIZATIONS

GENERAL PROVISIONS

§ 1452. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450e, 1484 of this title; title 12 sections 1228, 1787, 1821; title 40 section 483; title 42 section 4261.

SUBCHAPTER II—LOAN GUARANTY AND INSURANCE

§ 1489. Loans made by certain financial institutions without regard to limitations and restrictions of other Federal statutes with respect to certain particulars

REFERENCES IN TEXT

Federal savings and loan association, referred to in text, deemed also a reference to Federal mutual savings bank, see section 1462 of Title 12, Banks and Banking.

SUBCHAPTER IV—INDIAN BUSINESS GRANTS

§ 1523. Authorization of appropriations

There are authorized to be appropriated not to exceed the sum of $14,000,000 for each of the fiscal years 1978 and 1979 for the purposes of this subchapter.

(As amended Pub. L. 95-68, July 20, 1977, 91 Stat. 272.)

AMENDMENTS

1977—Pub. L. 95-68 substituted "$14,000,000 for each of the fiscal years 1978 and 1979" for "$10,000,000 for each of the fiscal years 1975, 1976, and 1977".

CHAPTER 18—INDIAN HEALTH CARE

§ 1603. Definitions

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1934 of this title; title 42 sections 294y-1, 1395qq, 1396d, 1396j.

SUBCHAPTER I—INDIAN HEALTH PROFESSIONAL PERSONNEL

§ 1614. Indian health service extern programs

(a) Employment of scholarship grantees during nonacademic periods

Any individual who receives a scholarship grant pursuant to section 294y–1 of title 42 shall be entitled to employment in the Service during any nonacademic period of the year. Periods of employment pursuant to this subsection shall not be counted in determining the fulfillment of the service obligation incurred as a condition of the scholarship grant.

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 95–83, title III, § 307(n)(2), Aug. 1, 1977, 91 Stat. 393.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–83 substituted reference to "section 294y–1 of title 42" for prior reference to "section 104" meaning section 104 of Pub. L. 94–437, which added section 234(i)(2) of Title 42, The Public Health and Welfare.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER IV—HEALTH SERVICES FOR URBAN INDIANS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1603 of this title; title 42 section 294y–1.

CHAPTER 19—INDIAN CLAIMS SETTLEMENTS WITH STATES [NEW]

Sec.
1701. Congressional findings and declaration of policy.
1702. Definitions.
1703. Rhode Island Indian Claims Settlement Fund; establishment.
1704. Option agreements to purchase private settlement lands.
(a) Acceptance of option agreement assignments; reasonableness of terms and conditions.
(b) Amount of payment.
(c) Limitation on option fees.
(d) Application of option fee.
(e) Retention of option payment.
1705. Publication of findings; approval of prior transfers and extinguishment of claims and aboriginal title involving Narragansett Tribe and town of Charlestown, Rhode Island.
1706. Findings by Secretary.
1707. Purchase and transfer of private settlement lands.
(a) Determination by Secretary; assignment of settlement lands to State Corporation.
(b) Moneys remaining in fund.
(c) Duties and liabilities of United States upon discharge of Secretary's duties; restriction on conveyance of settlement lands; affect on easements for public or private purposes.
1708. Applicability of State law.
1709. Preservation of Federal benefits.
1710. Authorization of appropriations.
1711. Limitation of actions; jurisdiction.
1712. Approval of prior transfers and extinguishment of claims and aboriginal title outside town of Charlestown, Rhode Island and involving other Indians in Rhode Island.

§ 1701. Congressional findings and declaration of policy

Congress finds and declares that—

(a) there are pending before the United States District Court for the District of Rhode Island two consolidated actions that involve Indian claims to certain public and private lands within the town of Charlestown, Rhode Island;

(b) the pendency of these lawsuits has resulted in severe economic hardships for the residents of the town of Charlestown by clouding the titles to much of the land in the town, including lands not involved in the lawsuits;

(c) the Congress shares with the State of Rhode Island and the parties to the lawsuits a desire to remove all clouds on titles resulting from such Indian land claims within the State of Rhode Island; and

(d) the parties to the lawsuits and others interested in the settlement of Indian land claims within the State of Rhode Island have executed a Settlement Agreement which requires implementing legislation by the Congress of the United States and the legislature of the State of Rhode Island.

(Pub. L. 95–395, § 2, Sept. 30, 1978, 92 Stat. 813.)

SHORT TITLE

Section 1 of Pub. L. 95–395 provided: "That this Act [which enacted this chapter] may be cited as the 'Rhode Island Indian Claims Settlement Act'."

§ 1702. Definitions

For the purposes of this chapter, the term—

(a) "Indian Corporation" means the Rhode Island nonbusiness corporation known as the "Narragansett Tribe of Indians";

(b) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish;

(c) "lawsuits" means the actions entitled "Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al., C.A. No. 75–0006 (D.R.I.)" and "Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75–0005 (D.R.I.)";

(d) "private settlement lands" means approximately nine hundred acres of privately held land outlined in red in the map marked "Exhibit A" attached to the Settlement Agreement that are to be acquired by the Secretary from certain private landowners pursuant to sections 1704 and 1707 of this title;

(e) "public settlement lands" means the lands described in paragraph 2 of the Settlement Agreement that are to be conveyed by

the State of Rhode Island to the State Corporation pursuant to legislation as described in section 1706 of this title;

(f) "settlement lands" means those lands defined in subsections (d) and (e) of this section;

(g) "Secretary" means the Secretary of the Interior;

(h) "settlement agreement" means the document entitled "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims", executed as of February 28, 1978, by representatives of the State of Rhode Island, of the town of Charlestown, and of the parties to the lawsuits, as filed with the Secretary of the State of Rhode Island;

(i) "State Corporation" means the corporation created or to be created by legislation enacted by the State of Rhode Island as described in section 1706 of this title; and

(j) "transfer" includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance, or any event or events that resulted in a change of possession or control of land or natural resources.

(Pub. L. 95-395, § 3, Sept. 30, 1978, 92 Stat. 813.)

§ 1703. Rhode Island Indian Claims Settlement Fund; establishment

There is hereby established in the United States Treasury a fund to be known as the Rhode Island Indian Claims Settlement Fund into which $3,500,000 shall be deposited following the appropriation authorized by section 1710 of this title.

(Pub. L. 95-395, § 4, Sept. 30, 1978, 92 Stat. 814.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1704, 1707 of this title.

§ 1704. Option agreements to purchase private settlement lands

(a) Acceptance of option agreement assignments; reasonableness of terms and conditions

The Secretary shall accept assignment of reasonable two-year option agreements negotiated by the Governor of the State of Rhode Island or his designee for the purchase of the private settlement lands: *Provided*, That the terms and conditions specified in such options are reasonable and that the total price for the acquisition of such lands, including reasonable costs of acquisition, will not exceed the amount specified in section 1703 of this title. If the Secretary does not determine that any such option agreement is unreasonable within sixty days of its submission, the Secretary will be deemed to have accepted the assignment of the option.

(b) Amount of payment

Payment for any option entered into pursuant to subsection (a) of this section shall be in the amount of 5 per centum of the fair market value of the land or natural resources as of the date of the agreement and shall be paid from the fund established by section 1703 of this title.

(c) Limitation on option fees

The total amount of the option fees paid pursuant to subsection (b) of this section shall not exceed $175,000.

(d) Application of option fee

The option fee for each option agreement shall be applied to the agreed purchase price in the agreement if the purchase of the defendant's land or natural resources is completed in accordance with the terms of the option agreement.

(e) Retention of option payment

The payment for each option may be retained by the party granting the option if the property transfer contemplated by the option agreement is not completed in accordance with the terms of the option agreement.

(Pub. L. 95-395, § 5, Sept. 30, 1978, 92 Stat. 814.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1707 of this title.

§ 1705. Publication of findings; approval of prior transfers and extinguishment of claims and aboriginal title involving Narragansett Tribe and town of Charlestown, Rhode Island

(a) If the Secretary finds that the State of Rhode Island has satisfied the conditions set forth in section 1706 of this title, he shall publish such findings in the Federal Register and upon such publication—

(1) any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, and any transfer of land or natural resources located anywhere within the town of Charlestown, Rhode Island, by, from, or on behalf of any Indian, Indian nation, or tribe of Indians, including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in subsection (a) of this section may involve land or natural resources to which the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, had aboriginal title, subsection (a) of this section shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of a transfer of land or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or right involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy) shall be regarded as extinguished as of the date of the transfer.

(b) Any Indian, Indian nation, or tribe of Indians (other than the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof) whose transfer of land or natural resources was approved or whose aboriginal title or claims were extinguished by subsection (a) of this section may, within a period of one hundred and eighty days after publication of the Secretary's findings pursuant to this section, bring an action against the State Corporation in lieu of an action against any other person against whom a cause may have existed in the absence of this section. In any such action, the remedy shall be limited to a right of possession of the settlement lands.

(Pub. L. 95–395, § 6, Sept. 30, 1978, 92 Stat. 815.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, referred to in subsec. (a)(1), was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1706, 1707, 1712 of this title.

§ 1706. Findings by Secretary

Section 1705 of this title shall not take effect until the Secretary finds—

(a) that the State of Rhode Island has enacted legislation creating or authorizing the creation of a State chartered corporation satisfying the following criteria:

(1) the corporation shall be authorized to acquire, perpetually manage, and hold the settlement lands;

(2) the corporation shall be controlled by a board of directors, the majority of the members of which shall be selected by the Indian Corporation or its successor, and the remaining members of which shall be selected by the State of Rhode Island; and

(3) the corporation shall be authorized, after consultation with appropriate State officials, to establish its own regulations concerning hunting and fishing on the settlement lands, which need not comply with regulations of the State of Rhode Island but which shall establish minimum standards for the safety of persons and protection of wildlife and fish stock; and

(b) that State of Rhode Island has enacted legislation authorizing the conveyance to the State Corporation of land and natural resources that substantially conform to the public settlement lands as described in paragraph 2 of the Settlement Agreement.

(Pub. L. 95–395, § 7, Sept. 30, 1978, 92 Stat. 816.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1705, 1707, 1709 of this title.

§ 1707. Purchase and transfer of private settlement lands

(a) Determination by Secretary; assignment of settlement lands to State Corporation

When the Secretary determines that the State Corporation described in section 1706(a) of this title has been created and will accept the settlement lands, the Secretary shall exercise within sixty days the options entered into pursuant to section 1704 of this title and assign the private settlement lands thereby purchased to the State Corporation.

(b) Moneys remaining in fund

Any moneys remaining in the fund established by section 1703 of this title after the purchase described in subsection (a) of this section shall be returned to the general Treasury of the United States.

(c) Duties and liabilities of United States upon discharge of Secretary's duties; restriction on conveyance of settlement lands; affect on easements for public or private purposes

Upon the discharge of the Secretary's duties under sections 1704, 1705, 1706, and 1707 of this title, the United States shall have no further duties or liabilities under this chapter with respect to the Indian Corporation or its successor, the State Corporation, or the settlement lands: *Provided, however,* That if the Secretary subsequently acknowledges the existence of the Narragansett Tribe of Indians, then the settlement lands may not be sold, granted, or otherwise conveyed or leased to anyone other than the Indian Corporation, and no such disposition of the settlement lands shall be of any validity in law or equity, unless the same is approved by the Secretary pursuant to regulations adopted by him for that purpose: *Provided, however,* That nothing in this chapter shall affect or otherwise impair the ability of the State Corporation to grant or otherwise convey (including any involuntary conveyance by means of eminent domain or condemnation proceedings) any easement for public or private purposes pursuant to the laws of the State of Rhode Island.

(Pub. L. 95–395, § 8, Sept. 30, 1978, 92 Stat. 816.)

§ 1708. Applicability of State law

Except as otherwise provided in this chapter, the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.

(Pub. L. 95–395, § 9, Sept. 30, 1978, 92 Stat. 817.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1702 of this title.

§ 1709. Preservation of Federal benefits

Nothing contained in this chapter or in any legislation enacted by the State of Rhode Island as described in section 1706 of this title shall affect or otherwise impair in any adverse manner any benefits received by the State of Rhode Island under the Federal Aid in Wildlife Restoration Act of September 2, 1937 (16 U.S.C. 669–669(i), or the Federal Aid in Fish Restoration Act of August 9, 1950 (16 U.S.C. 777–777(k)).

(Pub. L. 95–395, § 10, Sept. 30, 1978, 92 Stat. 817.)

REFERENCES IN TEXT

The Federal Aid in Wildlife Restoration Act of September 2, 1937, referred to in text, is act Sept. 2, 1937, ch. 899, 50 Stat. 917, as amended, which is classified generally to chapter 5B (§ 669 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see short title note set out under section 669 of Title 16 and Tables.

The Federal Aid in Fish Restoration Act of August 9, 1950, referred to in text, is act Aug. 9, 1950, ch. 658, 64 Stat. 430, as amended, which is classified generally to chapter 10B (§ 777 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 777 of Title 16 and Tables.

§ 1710. Authorization of appropriations

There is hereby authorized to be appropriated $3,500,000 to carry out the purposes of this chapter.

(Pub. L. 95–395, § 11, Sept. 30, 1978, 92 Stat. 817.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1703 of this title.

§ 1711. Limitation of actions; jurisdiction

Notwithstanding any other provision of law, any action to contest the constitutionality of this chapter shall be barred unless the complaint is filed within one hundred and eighty days of September 30, 1978. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the District of Rhode Island.

(Pub. L. 95–395, § 12, Sept. 30, 1978, 92 Stat. 817.)

§ 1712. Approval of prior transfers and extinguishment of claims and aboriginal title outside town of Charlestown, Rhode Island and involving other Indians in Rhode Island

(a) Except as provided in subsection (b) of this section—

(1) any transfer of land or natural resources located anywhere within the State of Rhode Island outside the town of Charlestown from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (other than transfers included in and approved by section 1705 of this title, including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, 1 Stat. 137), and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in paragraph (1) may involve land or natural resources to which such Indian, Indian nation, or tribe of Indians had aboriginal title, paragraph (1) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of such transfers of land or natural resources effected by this subsection or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by any such Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or rights involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy), shall be regarded as extinguished as of the date of the transfer.

(b) This section shall not apply to any claim, right, or title of any Indian, Indian nation, or tribe of Indians that is asserted in an action commenced in a court of competent jurisdiction within one hundred and eighty days of September 30, 1978: *Provided*, That the plaintiff in any such action shall cause notice of the action to be served upon the Secretary and the Governor of the State of Rhode Island.

(Pub. L. 95–395, § 13, Sept. 30, 1978, 92 Stat. 817.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, 1 Stat. 137), referred to in subsec. (a)(1), was not classified to the Code.

CHAPTER 20—TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE [NEW]

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§ 1801. Definitions

(1) "Indian" means a person who is a member of an Indian tribe and is eligible to receive services from the Secretary of the Interior;

(2) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(4) "tribally controlled community college" means an institution of higher education which is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe;

(5) "institution of higher education" means an institution of higher education as defined by section 1141(a) of title 20, except that clause (2) of such section shall not be applicable;

(6) "national Indian organization" means an organization which the Secretary finds is nationally based, represents a substantial Indian constituency, and has expertise in the field of Indian education; and

(7) "full-time equivalent Indian student" means the number of Indians enrolled full-time, and the full-time equivalent of the number of Indians enrolled part-time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve) in each tribally controlled community college, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term.

(Pub. L. 95–471, § 1, Oct. 17, 1978, 92 Stat. 1325.)

References in Text

The Alaskan Native Claims Settlement Act, referred to in par. (2), probably means the Alaska Native Claims Settlement Act, Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Codification

Section was not enacted as part of title I of Pub. L. 95–471, which comprises this chapter.

Short Title

Section 1 of Pub. L. 95–471 provided: "That this Act [which enacted this chapter and section 640c–1 of this title, amended section 640c of this title, and enacted provisions set out as notes under sections 640a and 640c–1 of this title] may be cited as the 'Tribally Controlled Community College Assistance Act of 1978'."

Section Referred to in Other Sections

This section is referred to in section 640c–1 of this title.

§ 1802. Purpose

It is the purpose of this chapter to provide grants for the operation and improvement of tribally controlled community colleges to insure continued and expanded educational opportunities for Indian students.

(Pub. L. 95–471, title I, § 101, Oct. 17, 1978, 92 Stat. 1325.)

§ 1803. Grants authorized

(a) The Secretary is authorized to make grants pursuant to this chapter to tribally controlled community colleges to aid in the post-secondary education of Indian students.

(b) Grants made pursuant to this chapter shall go into the general operating funds of the institution to defray the expense of activities related to education programs for Indian students. Funds provided pursuant to this chapter shall not be used in connection with religious worship or sectarian instruction.

(Pub. L. 95–471, title I, § 102, Oct. 17, 1978, 92 Stat. 1326.)

§ 1804. Eligible grant recipients

To be eligible for assistance under this chapter, a tribally controlled community college must be one which—

(1) is governed by a board of directors or board of trustees a majority of which are Indians;

(2) demonstrates adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians; and

(3) if in operation for more than one year, has students a majority of whom are Indians.

(Pub. L. 95–471, title I, § 103, Oct. 17, 1978, 92 Stat. 1326.)

§ 1805. Technical assistance contracts

The Secretary shall provide, upon request, technical assistance to tribally controlled community colleges either directly or through contract. In the awarding of contracts for technical assistance, preference shall be given to an organization designated by the tribally controlled community college to be assisted. No authority to enter into contracts provided by this section shall be effective except to the extent authorized in advance by appropriations Acts.

(Pub. L. 95–471, title I, § 104, Oct. 17, 1978, 92 Stat. 1326.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1810 of this title.

§ 1806. Feasibility studies

(a) Development of plans, procedures, and criteria

The Secretary is authorized to enter into an agreement with the Assistant Secretary of Education of the Department of Health, Education, and Welfare to assist the Bureau of Indian Affairs in developing plans, procedures, and criteria for conducting the feasibility studies required by this section. Such agreement shall provide for continuing technical assistance in the conduct of such studies.

(b) Initiation by Secretary; grant applications and budgets

The Secretary, within thirty days after a request by any Indian tribe, shall initiate a feasibility study to determine whether there is justification to encourage and maintain a tribally controlled community college, and, upon a positive determination, shall aid in the preparation of grant applications and related budgets which will insure successful operation of such an institution.

(c) Source of appropriations

Funds to carry out the purposes of this section for any fiscal year may be drawn from either—

(1) general administrative appropriations to the Secretary made after October 17, 1978 for such fiscal year; or

(2) not more than 10 per centum of the funds appropriated to carry out section 1807 of this title for such fiscal year.

(Pub. L. 95–471, title I, § 105, Oct. 17, 1978, 92 Stat. 1326.)

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1807 of this title.

§ 1807. Grants to tribally controlled community colleges

(a) Submission of applications; necessity of feasibility study

Grants shall be made under this chapter only in response to applications by tribally controlled community colleges. Such applications shall be submitted at such time, in such manner, and will contain or be accompanied by such information as the Secretary may reasonably require pursuant to regulations. The Secretary shall not consider any grant application unless a feasibility study has been conducted under section 1806 of this title and it has been found that the applying community college will service a reasonable student population.

(b) Determination of support; factors considered

The Secretary shall consult with the Assistant Secretary of Education of the Department of Health, Education, and Welfare to determine the reasonable number of students required to support a tribally controlled community college. Consideration shall be given to such factors as tribal and cultural differences, isolation, the presence of alternate education sources, and proposed curriculum.

(c) Priority and number of grants

Priority in grants shall be given to institutions which are operating on October 17, 1978, and which have a history of service to the Indian people. In the first year for which funds are appropriated to carry out this section, the number of grants shall be limited to not less than eight nor more than fifteen.

(d) Consultation with national Indian organizations and tribal governments

In making grants pursuant to this section, the Secretary shall, to the extent practicable, consult with national Indian organizations and with tribal governments chartering the institutions being considered.

(e) Report to Congress

The Secretary shall report to Congress on January 15 of each year the current status of tribally controlled community colleges and his recommendations for needed action.

(Pub. L. 95–471, title I, § 106, Oct. 17, 1978, 92 Stat. 1327.)

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1806, 1810, 1811 of this title.

§ 1808. Amount of grants

(a) Full-time equivalent students; maximum grants

Except as provided in section 1811 of this title, the Secretary shall, for each academic year, grant to each tribally controlled community college having an application approved by him, an amount equal to $4,000 for each full-time equivalent Indian student in attendance at such college during such academic year, as determined by the Secretary in accordance with such regulations as he may prescribe, except that no grant shall exceed the total annual cost of the education program provided by such college.

(b) Advance installment payments; adjustments

The Secretary shall make payments, pursuant to grants under this chapter, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied

to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

(c) Accounting by recipient institutions; data collection system; report to Congress

(1) Each institution receiving payments under this chapter shall annually provide to the Secretary an accurate and detailed accounting of its operating and maintenance expenses and such other information concerning costs as the Secretary may request.

(2) The Secretary shall, in consultation with the National Center for Education Statistics, establish a data collection system for the purpose of obtaining accurate information with respect to the needs and costs of operation and maintenance of tribally controlled community colleges. The Secretary shall report annually to the Congress on such needs.

(Pub. L. 95–471, title I, § 107, Oct. 17, 1978, 92 Stat. 1327.)

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

§ 1809. Effect on other programs

Except as specifically provided in this chapter, eligibility for assistance under this chapter shall not, by itself, preclude the eligibility of any tribally controlled college to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(Pub. L. 95–471, title I, § 108, Oct. 17, 1978, 92 Stat. 1328.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in text, is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

§ 1810. Authorization of appropriations

(a)(1) There are authorized to be appropriated, for carrying out section 1807 of this title, $25,000,000 for each of the fiscal years beginning October 1, 1979, and October 1, 1980, and $30,000,000 for the fiscal year beginning October 1, 1981.

(2) There are authorized to be appropriated $3,200,000 for each of such three fiscal years, for the provision of technical assistance pursuant to section 1805 of this title.

(b) Unless otherwise provided in appropriations Acts, funds appropriated pursuant to this section shall remain available until expended.

(c) Nothing in this chapter shall be deemed to authorize appropriations for the fiscal year beginning October 1, 1978.

(Pub. L. 95–471, title I, § 109, Oct. 17, 1978, 92 Stat. 1328.)

§ 1811. Grant adjustments

(a) If the sums appropriated for any fiscal year for grants under this chapter are not sufficient to pay in full the total amounts which approved grant applicants are eligible to receive under this chapter for that fiscal year, the amounts which such applicants are eligible to receive under this chapter for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for the same fiscal year, such reduced amounts shall be increased on the same basis as they were reduced. Sums appropriated in excess of the amount necessary to pay in full such total eligible amounts shall be allocated by ratably increasing such total eligible amounts.

(b) In any fiscal year in which the amounts for which grant recipients are eligible to receive have been reduced under the first sentence of subsection (a) of this section, and in which additional funds have not been made available to pay in full the total of such amounts under the second sentence of such subsection, each grantee shall report to the Secretary any unused portion of received funds ninety days prior to the grant expiration date. The amounts so reported by any grant recipient shall be made available for reallocation to eligible grantees on a basis proportionate to the amount which is unfunded as a result of the ratable reduction, but no grant recipient shall receive, as a result of such reallocation, more than the amount provided for under section 1807(a) of this title.

(Pub. L. 95–471, title I, § 110, Oct. 17, 1978, 92 Stat. 1328.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1808 of this title.

§ 1812. Report on current facilities

The Secretary shall, not later than ninety days after October 17, 1978, prepare and submit a report to the Congress containing a survey of existing and planned physical facilities of tribally controlled community colleges, including in his report a survey of Bureau of Indian Affairs existing and planned facilities which may be used for tribally controlled community colleges without disruption of current Bureau programs.

(Pub. L. 95–471, title I, § 111, Oct. 17, 1978, 92 Stat. 1328.)

§ 1813. Study of facilities needs

The Secretary shall conduct a detailed survey and study of the academic facilities needs of tribally controlled community colleges and shall report to the Congress not later than November 1, 1979, the results of such survey and study. Such report shall include any recommendations or views submitted by the governing body of any such college and by the governing body of the tribe, and shall include detailed recommendations by the Secretary as to the number, type, and cost of academic facilities which are

required, ranking each such required facility by relative need.

(Pub. L. 95–471, title I, § 112, Oct. 17, 1978, 92 Stat. 1329.)

§ 1814. Miscellaneous provisions

(a) The Navajo Tribe shall not be eligible to participate under the provisions of this chapter.

(b)(1) The Secretary shall not provide any funds to any institution which denies admission to any Indian student because such individual is not a member of a specific Indian tribe, or which denies admission to any Indian student because such individual is a member of a specific tribe.

(2) The Secretary shall take steps to recover any unexpended and unobligated funds provided under this chapter held by an institution determined to be in violation of paragraph (1).

(Pub. L. 95–471, title I, § 113, Oct. 17, 1978, 92 Stat. 1329.)

§ 1815. Rules and regulations

(a) Consultation with national Indian organizations

Within four months from October 17, 1978, the Secretary shall, to the extent practicable, consult with national Indian organizations to consider and formulate appropriate rules and regulations for the conduct of the grant program established by this chapter.

(b) Publication

Within six months from October 17, 1978, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(c) Promulgation

Within ten months from October 17, 1978, the Secretary shall promulgate rules and regulations for the conduct of the grant program established by this chapter.

(d) Source of appropriations

Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after October 17, 1978.

(Pub. L. 95–471, title I, § 114, Oct. 17, 1978, 92 Stat. 1329.)

CHAPTER 21—INDIAN CHILD WELFARE [NEW]

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§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Pub. L. 95–608, § 2, Nov. 8, 1978, 92 Stat. 3069.)

Short Title

Section 1 of Pub. L. 95–608 provided: "That this Act [which enacted this chapter] may be cited as the 'Indian Child Welfare Act of 1978'."

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Pub. L. 95–608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Pub. L. 95–608, § 4, Nov. 8, 1978, 92 Stat. 3069.)

SUBCHAPTER I—CHILD CUSTODY PROCEEDINGS

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(Pub. L. 95–608, title I, § 101, Nov. 8, 1978, 92 Stat. 3071.)

Section Referred to in Other Sections

This section is referred to in sections 1914, 1918, 1923 of this title.

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or

Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Pub. L. 95–608, title I, § 102, Nov. 8, 1978, 92 Stat. 3071.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1914, 1916 of this title.

§ 1913. Parental rights, voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

(Pub. L. 95–608, title I, § 103, Nov. 8, 1978, 92 Stat. 3072.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1914 of this title.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing

that such action violated any provision of sections 1911, 1912, and 1913 of this title.

(Pub. L. 95–608, title I, § 104, Nov. 8, 1978, 92 Stat. 3072.)

§ 1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

(Pub. L. 95–608, title I, § 105, Nov. 8, 1978, 92 Stat. 3073.)

§ 1916. Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(Pub. L. 95–608, title I, § 106, Nov. 8, 1978, 92 Stat. 3073.)

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

(Pub. L. 95–608, title I, § 107, Nov. 8, 1978, 92 Stat. 3073.)

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

(Pub. L. 95–608, title I, § 108, Nov. 8, 1978, 92 Stat. 3074.)

REFERENCES IN TEXT

The Act of Aug. 15, 1953, referred to in subsec. (a), is act Aug. 15, 1953, ch. 505, 67 Stat. 588, as amended, which enacted section 1162 of Title 18, Crimes and Criminal Procedure, section 1360 of Title 28, Judiciary and Judicial Procedure, and provisions set out as notes under section 1360 of Title 28. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1923 of this title.

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

(Pub. L. 95–608, title I, § 109, Nov. 8, 1978, 92 Stat. 3074.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1918, 1923 of this title.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(Pub. L. 95–608, title I, § 110, Nov. 8, 1978, 92 Stat. 3075.)

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

(Pub. L. 95–608, title I, § 111, Nov. 8, 1978, 92 Stat. 3075.)

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable

State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(Pub. L. 95–608, title I, § 112, Nov. 8, 1978, 92 Stat. 3075.)

§ 1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

(Pub. L. 95–608, title I, § 113, Nov. 8, 1978, 92 Stat. 3075.)

SUBCHAPTER II—INDIAN CHILD AND FAMILY PROGRAMS

§ 1931. Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV–B and XX of the Social Security Act [42 U.S.C. 620 et seq., 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV–B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

(Pub. L. 95–608, title II, § 201, Nov. 8, 1978, 92 Stat. 3075.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV–B and XX of the Social Security Act are classified generally to part B (§ 620 et seq.) of subchapter IV and subchapter XX (§ 1397 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 1932. Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

(Pub. L. 95-608, title II, § 202, Nov. 8, 1978, 92 Stat. 3076.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1934 of this title.

§ 1933. Funds for on and off reservation programs

(a) Appropriated funds for similar programs of Department of Health, Education, and Welfare; appropriation in advance for payments

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Appropriation authorization under section 13 of this title

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

(Pub. L. 95-608, title II, § 203, Nov. 8, 1978, 92 Stat. 3076.)

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1934 of this title.

§ 1934. "Indian" defined for certain purposes

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

(Pub. L. 95-608, title II, § 204, Nov. 8, 1978, 92 Stat. 3077.)

SUBCHAPTER III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

§ 1951. Information availability to and disclosure by Secretary

(a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

(Pub. L. 95-608, title III, § 301, Nov. 8, 1978, 92 Stat. 3077.)

§ 1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 95-608, title III, § 302, Nov. 8, 1978, 92 Stat. 3077.)

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1961. Education; day schools; report to congressional committees: particular consideration of elementary grade facilities

(a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular con-

sideration to the provision of educational facilities for children in the elementary grades.

(Pub. L. 95-608, title IV, § 401, Nov. 8, 1978, 92 Stat. 3078.)

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, and redesignation of the Secretary and Department of Health, Education, and Welfare as the Secretary and Department of Health and Human Services, see sections 3441, 3503 and 3508 of Title 20, Education.

§ 1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

(Pub. L. 95-608, title IV, § 402, Nov. 8, 1978, 92 Stat. 3078.)

§ 1963. Severability of provisions

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

(Pub. L. 95-608, title IV, § 403, Nov. 8, 1978, 92 Stat. 3078.)

CHAPTER 22—EDUCATION PROGRAMS OF BUREAU OF INDIAN AFFAIRS [NEW]

Sec.

2001. Standards for basic education of Indian children in Bureau or contract schools
- (a) Studies and surveys for establishment and revision of standards.
- (b) Minimum academic standards; proposal, establishment, applicability, etc.
- (c) Alternative or modified standards in lieu of minimum academic standards.
- (d) Waiver or revision of minimum academic standards or alternative or modified standards by tribal governing body or local school board; action by Secretary on revised standards.
- (e) Contracts for implementation of minimum academic standards or alternative or modified standards pursuant to request of contract school board; alternative or modified standards in lieu of established minimum academic standards or alternative or modified standards pursuant to request of contract school board.
- (f) General implementation authority of established applicable standards; submission of plan to Congressional committees for compliance with established applicable standards; contents of plan.
- (g) Authorization of appropriations.

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- (a) Study for establishment of criteria; purpose; scope of criteria.
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- (c) Implementation authority of established applicable criteria; submission of plan to Congressional committees for compliance with established applicable criteria; contents of plan.
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2003. Regulations implementing standards and criteria requirements.

2004. Funding of studies.

2005. Facilities construction.
- (a) Compliance with applicable Federal, tribal, or State health and safety standards; maximum effect of tribal standards; termination of operations prohibited.
- (b) Submission of plan to Congressional committees for compliance with applicable standards; contents of plan.
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- (a) Implementation of authority vested in Assistant Secretary for Indian Affairs through Director of Office of Indian Education; scope of functions vested; applicable statutory principles.
- (b) Direction and supervision of personnel operations by Director; coordination by Assistant Secretary of activities of affected Bureau offices and Office; separate support services not required.
- (c) Functions of education personnel in Bureau agencies under direction and supervision of Director; services for Bureau-operated boarding schools located off reservation.
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2007. Policies and procedures for implementation of transferred administrative functions; establishment, etc.

2008. Allotment formula.
- (a) Regulations establishing formula for minimum annual amount of funds for each school; considerations.
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- (c) Funds for general local operation of schools in emergencies, etc.; report to Congressional committees.

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- (a) Regulations establishing direct funding and support system for schools; criteria.
- (b) Local financial plans for expenditure of alloted funds by Bureau schools; preparation, revision, etc.
- (c) Funds for self-determination grants; prerequisites for use.
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Sec.
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(a) Nonapplicability to educators or education positions of Federal statutory provisions relating to leave, pay, classification, appointment, etc. of civil service employees; effective date.
(b) Regulations implementing requirements; scope of regulations.
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(d) Regulatory requirements respecting appointment of educators; administrative procedures applicable to appointment etc.
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(g) Determinations respecting applicability or inapplicability of Federal statutory provisions relating to classification of Bureau positions and employment.
(h) Rates of basic compensation or annual salary for educators and education positions; cost-of-living allowance for educators employed in education position in Alaska; postdifferential pay.
(i) Leave system credits.
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2012. Management information system; establishment, scope, etc.
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2017. Constitutional and civil rights of Indian children attending Bureau schools; rules and regulations.
2018. Regulations implementing administrative, etc., provisions; applicability; promulgation, submission, and effect.
2019. Definitions.

§ 2001. Standards for basic education of Indian children in Bureau or contract schools

(a) Studies and surveys for establishment and revision of standards

The Secretary, in consultation with the Assistant Secretary of Health, Education, and Welfare for Education, and in consultation with Indian organizations and tribes, shall carry out or cause to be carried out by contract with an Indian organization such studies and surveys, making the fullest use possible of other existing studies, surveys, and plans, as are necessary to establish and revise standards for the basic education of Indian children attending Bureau schools and Indian controlled contract schools (hereinafter referred to as "contract schools"). Such studies and surveys shall take into account factors such as academic needs, local cultural differences, type and level of language skills, geographical isolation and appropriate teacher-student ratios for such children, and shall be directed toward the attainment of equal educational opportunity for such children.

(b) Minimum academic standards; proposal, establishment, applicability, etc.

(1) Within eighteen months of November 1, 1978, the Secretary shall propose minimum academic standards for the basic education of Indian children, and shall distribute such proposed standards to the tribes and publish such proposed standards in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within twenty-one months of November 1, 1978, the Secretary shall establish final standards, distribute such standards to all the tribes and publish such standards in the Federal Register. The Secretary shall revise such standards periodically as necessary. Prior to any revision of such standards, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(2) Such standards shall apply to Bureau schools, and subject to subsection (e) of this section, to contract schools, and may also serve as a model for educational programs for Indian children in public schools. In establishing and revising such standards, the Secretary shall take into account the special needs of Indian students and the support and reinforcement of the specific cultural heritage of each tribe.

(c) Alternative or modified standards in lieu of minimum academic standards

The Secretary shall provide alternative or modified standards in lieu of the standards established under subsection (b) of this section, where necessary, so that the programs of each school shall be in compliance with the minimum standards required for accreditation of schools in the State where the school is located.

(d) Waiver or revision of minimum academic standards or alternative or modified standards by tribal governing body or local school board; action by Secretary on revised standards

A tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c) of this section, where such standards are deemed by such body to be inappropriate or ill-conceived, and shall also have the authority to revise such standards to take into account the specific needs of the tribe's children. Such revised standards shall be established by the Secretary unless specifically rejected by the Secretary for good cause and in writing to the affected tribes or local school board, which rejection shall be final and unreviewable.

(e) Contracts for implementation of minimum academic standards or alternative or modified standards pursuant to request of contract school board; alternative or modified standards in lieu of established minimum academic standards or alternative or modified standards pursuant to request of contract school board

The Secretary, through contracting procedures, shall assist school boards of contract schools in the implementation of the standards established under subsection (b) and (c) of this section, if the school boards request that such standards, in part or in whole, be implemented. The Secretary shall not refuse to enter into a contract with respect to any contract school on the basis of failure to meet such standards. At the request of a contract school board, the Secretary shall provide alternative or modified standards for the standards established under subsections (b) and (c) of this section to take into account the needs of the Indian children and the contract school.

(f) General implementation authority of established applicable standards; submission of plan to Congressional committees for compliance with established applicable standards; contents of plan

Subject to subsections (d) and (e) of this section, the Secretary shall begin to implement the standards established under this section immediately upon the date of their establishment. No later than January 1, 1981, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under this section. Such plan shall include, but not be limited to, detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school up to the level required by such standards.

(g) Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary, for academic program costs, in order to bring all Bureau and contract schools up to the level required by the applicable standards established under this section.

(Pub. L. 95-561, title XI, § 1121, Nov. 1, 1978, 92 Stat. 2316; Pub. L. 96-46, § 2(b)(2)-(4), Aug. 6, 1979, 93 Stat. 341.)

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-46, § 2(b)(2), (3), substituted "eighteen months" and "twenty-one months" for "fifteen months" and "eighteen months", respectively.

Subsec. (f). Pub. L. 96-46, § 2(b)(4), substituted "No later than January 1, 1981" for "Within one year of such date".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-46 effective Oct. 1, 1978, see section 8 of Pub. L. 96-46, set out as an Effective Date of 1979 Amendment note under section 2701 of Title 20, Education.

EFFECTIVE DATE

Chapter effective Oct. 1, 1978, see section 1530 of Pub. L. 95-561, set out as an Effective Date note under section 2701 of title 20, Education.

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2003, 2004, 2008 of this title; title 20 section 241bb-1.

§ 2002. National criteria for dormitory situations

(a) Study for establishment of criteria; purpose; scope of criteria

The Secretary, in consultation with the Assistant Secretary for Health, Education, and Welfare for Education, and in consultation with Indian organizations and tribes, shall conduct or cause to be conducted by contract with an Indian organization, a study of the costs applicable to boarding arrangements for Indian students provided in Bureau and contract schools, for the purpose of establishing national criterial [1] for such dormitory situations. Such criteria shall include adult-child ratios, needs for counselors (including special needs related to off-reservation boarding arrangements), space, and privacy.

(b) Proposal, establishment, revision, etc.

Within fifteen months of November 1, 1978, the Secretary shall propose such criteria, and shall distribute such proposed criteria to the tribes and publish such proposed criteria in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within eighteen months of November 1, 1978, the Secretary shall establish final criteria, distribute such criteria to all the tribes, and publish such criteria in the Federal Register. The Secretary shall revise such criteria periodically as necessary. Prior to any revision of such criteria, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

[1] So in original. Probably should be "criteria".

(c) Implementation authority of established applicable criteria; submission of plan to Congressional committees for compliance with established applicable criteria; contents of plan

The Secretary shall begin to implement the criteria established under this section immediately upon the date of their establishment. No later than January 1, 1981, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract boarding schools up to the criteria established under this section. Such plan shall include, but not be limited to, predictions for the relative need for each boarding school in the future, detailed information on the status of each school in relation to the criteria established under this section, specific cost estimates for meeting such criteria at each school, and specific time lines for bringing each school up to the level required by such criteria.

(d) Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary in order to bring each school up to the level required by the criteria established under this section.

(Pub. L. 95–561, title XI, § 1122, Nov. 1, 1978, 92 Stat. 2318; Pub. L. 96–46, § 2(b)(5), Aug. 6, 1979, 93 Stat. 341.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–46 substituted "No later than January 1, 1981" for "Within one year of such date".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–46 effective Oct. 1, 1978, see section 8 of Pub. L. 96–46, set out as an Effective Date of 1979 Amendment note under section 2701 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2003, 2004, 2008 of this title.

§ 2003. Regulations implementing standards and criteria requirements

The Secretary shall establish such regulations as are necessary to carry out sections 2001 and 2002 of this title within eighteen months after November 1, 1978.

(Pub. L. 95–561, title XI, § 1123, Nov. 1, 1978, 92 Stat. 2319.)

§ 2004. Funding of studies

There are hereby authorized to be appropriated no more than $1,000,000 to carry out the studies conducted under section 2001(a) and section 2002(a) of this title.

(Pub. L. 95–561, title XI, § 1124, Nov. 1, 1978, 92 Stat. 2319.)

§ 2005. Facilities construction

(a) Compliance with applicable Federal, tribal, or State health and safety standards; maximum effect of tribal standards; termination of operations prohibited

The Secretary shall immediately begin to bring all schools, dormitories, and other facilities operated by the Bureau or under contract with the Bureau in connection with the education of Indian children into compliance with all applicable Federal, tribal, or State health and safety standards, whichever provide greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards), and with section 794 of title 29, except that nothing in this section shall require termination of the operations of any facility which does not comply with such provisions and which is in use on November 1, 1978.

(b) Submission of plan to Congressional committees for compliance with applicable standards; contents of plan

Within one year of November 1, 1978, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring such facilities into compliance with such standards. Such plan shall include, but not be limited to, detailed information on the status of each facility's compliance with such standards, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school into compliance with such standards.

(c) Priorities; submission to Congressional committees and publication in Federal Register of system to establish; publication in Federal Register and submission with budget request of current list

Within six months of November 1, 1978, the Secretary shall submit to the appropriate committees of Congress, and publish in the Federal Register, the system used to establish priorities for school construction projects. At the time any budget request for school construction is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all school construction priorities.

(d) Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out subsection (a) of this section.

(Pub. L. 95–561, title XI, § 1125, Nov. 1, 1978, 92 Stat. 2319.)

§ 2006. Bureau of Indian Affairs education functions

(a) Implementation of authority vested in Assistant Secretary for Indian Affairs through Director of Office of Indian Education; scope of functions vested; applicable statutory principles

The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure, and supervision of pro-

grams and expenditures of Federal funds for the purpose of Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs within the Bureau (hereinafter referred to as the "Office"), which shall be governed by the provisions of this Act, any other provision of law to the contrary notwithstanding.

(b) Direction and supervision of personnel operations by Director; coordination by Assistant Secretary of activities of affected Bureau offices and Office; separate support services not required

The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with provision of education services by the Bureau, including (but not limited to) school or institution custodial or maintenance personnel. The Assistant Secretary for Indian Affairs shall provide for the adequate coordination between the affected Bureau offices and the Office in order to facilitate the expeditious consideration of all contract functions relating to education. Nothing in this Act shall be construed to require the provision of separate support services for Indian education.

(c) Functions of education personnel in Bureau agencies under direction and supervision of Director; services for Bureau-operated boarding schools located off reservation

Education personnel located in Bureau agencies, who are under the direction and supervision of the Director of the Office in accordance with the first sentence of subsection (b) of this section, shall—

(1) monitor and evaluate Bureau education programs, and

(2) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, and curriculum.

However, in the case of boarding schools located off reservation operated by the Bureau, education personnel located in area offices of the Bureau shall provide such services, under the direction and supervision of the Director of the Office.

(d) Definition

For the purpose of this section the term "functions" includes powers and duties.

(Pub. L. 95-561, title XI, § 1126, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 96-46, § 2(b)(6), Aug. 6, 1979, 93 Stat. 341.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 20, Education, and Tables.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-46 inserted ", including (but not limited to) school or institution custodial or maintenance personnel" following "services by the Bureau".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-46 effective Oct. 1, 1978, see section 8 of Pub. L. 96-46, set out as an Effective Date of 1979 Amendment note under section 2701 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2007, 2018 of this title.

§ 2007. Policies and procedures for implementation of transferred administrative functions; establishment, etc.

Within six months after November 1, 1978, the Secretary shall establish and publish in the Federal Register the policies and procedures which are necessary to implement the transfer of functions made under section 2006 of this title.

(Pub. L. 95-561, title XI, § 1127, Nov. 1, 1978, 92 Stat. 2320.)

§ 2008. Allotment formula

(a) Regulations establishing formula for minimum annual amount of funds for each school; considerations; revision

The Secretary shall establish, by regulation adopted in accordance with section 2018 of this title, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. In establishing such formula, the Secretary shall consider—

(1) the number of Indian students served and size of the school;

(2) special cost factors, such as—

(A) isolation of the school;

(B) need for special staffing, transportation, or educational programs;

(C) food and housing costs;

(D) overhead costs associated with administering contracted education functions; and

(E) maintenance and repair costs associated with the physical condition of the educational facilities;

(3) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located;

(4) such other relevant factors as the Secretary determines are appropriate.

Upon the establishment of the standards required by sections 2001 and 2002 of this title, the Secretary shall revise the formula established under this subsection to reflect the cost and funding standards so established.

(b) Pro rata allotment of Federal funds appropriated for general local operation of schools in accordance with formula; exception

Notwithstanding any other provisions of law, Federal funds appropriated for the general local operation of Bureau and contract schools, shall be allotted pro rata in accordance with the formula established under subsection (a) of this section, except that, in the case of any such school which is located in a school district of a local educational agency which receives from Federal funds under other provisions of law an average payment per Indian child at-

tending such school in that district which is higher than the amount which would be received by such Bureau or contract school under such formula for each Indian child attending such school, the payment to be received by that school under this section for each such child shall be equal to such average payment for an Indian child in public school in that district.

(c) Implementation of formula; restriction of formula amounts for fiscal years 1980 and 1981

The formula established under subsection (a) of this section shall be implemented for fiscal year 1980 and each succeeding fiscal year, except that—

(1) for fiscal year 1980, no school shall as a consequence of such formula receive less than 90 per centum, nor more than 120 per centum, of the funds it received from Bureau education funds for fiscal year 1979;

(2) for fiscal year 1981, no school shall as a consequence of such formula receive less than 70 per centum, nor more than 170 per centum, of the funds it received from Bureau education funds for fiscal year 1979; and

(3) for fiscal year 1982 and any succeeding fiscal year the formula shall be fully implemented.

(d) Funds for general local operation of schools in emergencies, etc., report to Congressional committees

Notwithstanding subsection (b) of this section, the Secretary shall provide funds for the general local operation of Bureau and contract schools where necessitated by cases of emergencies or unforeseen contingencies not otherwise provided for under subsection (a) of this section. Whenever the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress.

(Pub. L. 95-561, title XI, § 1128, Nov. 1, 1978, 92 Stat. 2320; Pub. L. 96-46, § 2(b)(7), (8), Aug. 6, 1979, 93 Stat. 341.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-46, § 2(b)(7), struck out former par. (4), which provided that in establishing the formula the Secretary consider the cost of bringing the school up to the level of the standards established under sections 2001 and 2002 of this title, redesignated former par. (5) as (4), and inserted provision that upon establishment of the standards required by sections 2001 and 2002 of this title, the Secretary revise the formula to reflect the cost and funding standards so established.

Subsec. (c). Pub. L. 96-46, § 2(b)(8), added subsec. (c). Former subsec. (c) redesignated as (d).

Subsec. (d). Pub. L. 96-46, § 2(b)(8), redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-46 effective Oct. 1, 1978, see section 8 of Pub. L. 96-46, set out as an Effective Date of 1979 Amendment note under section 2701 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2009 of this title.

§ 2009. Uniform direct funding and support

(a) Regulations establishing direct funding and support system for schools; criteria

Within six months after November 1, 1978, the Secretary shall establish, by regulation adopted in accordance with section 2018 of this title, a system for the direct funding and support of all Bureau and contract schools. Such system shall allot funds, in accordance with section 2008 of this title, and shall provide each affected school with notification of its approximate allotment not later than the end of the school year preceding the year for which the allotment is to be made.

(b) Local financial plans for expenditure of alloted funds by Bureau schools; preparation, revision, etc.

In the case of all Bureau schools, allotted funds shall be expended on the basis of local financial plans which shall be prepared by the local school supervisor in active consultation with the local school board for each school, and the local school board for each school shall have the authority to ratify, reject, or amend such financial plan, and expenditures thereunder, and, on its own determination or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan. The supervisor of the school may appeal any such action by the local school board to the superintendent for education of the Bureau agency, and the superintendent may, for good cause and in writing to the local school board, overturn the action of the local school board.

(c) Funds for self-determination grants; prerequisites for use

Funds for self-determination grants under section 450h(a)(2) of this title shall not be used for providing technical assistance and training in the field of education by the Bureau unless such services are provided in accordance with a plan, agreed to by the tribe or tribes affected and the Bureau, under which control of education programs is intended to be transferred to such tribe or tribes within a specific period of time negotiated under such agreement.

(d) Request by local school board for technical assistance and training; compliance by Secretary

In the exercise of its authority under this section, a local school board may request technical assistance and training from the Secretary, and he shall, to the greatest extent possible, provide such services, and make appropriate provisions in the budget of the Office for such services.

(Pub. L. 95-561, title XI, § 1129, Nov. 1, 1978, 92 Stat. 2321.)

§ 2010. Policy for Indian control of Indian education

It shall be the policy of the Bureau, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

(Pub. L. 95-561, title XI, § 1130, Nov. 1, 1978, 92 Stat. 2321.)

§ 2011. Education personnel

(a) Nonapplicability to educators or education positions of Federal statutory provisions relating to leave, pay, classification, appointment, etc. of civil service employees; effective date

(1) Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, relating to leave, pay, and classification, and the sections relating to the appointment, promotion and removal of civil service employees, shall not apply to educators or to education positions (as defined in subsection (n) of this section).

(2) Paragraph (1) shall take effect one year after November 1, 1978.

(b) Regulations implementing requirements; scope of regulations

Not later than the effective date of subsection (a)(2) of this section, the Secretary shall prescribe regulations to carry out this section. Such regulations shall govern—

(1) the establishment of education positions,

(2) the establishment of qualifications for educators,

(3) the fixing of basic compensation for educators and education positions,

(4) the appointment of educators,

(5) the discharge of educators,

(6) the entitlement of educators to compensation,

(7) the payment of compensation to educators,

(8) the conditions of employment of educators,

(9) the length of the school year applicable to education positions described in subsection (n)(1)(A) of this section,

(10) the leave system for educators, and

(11) such other matters as may be appropriate.

(c) Regulatory requirements respecting qualifications of educators; temporary employment of individual in education position

(1) In prescribing regulations to govern the qualifications of educators, the Secretary shall require—

(A)(i) that lists of qualified and interviewed applicants for education positions be maintained in each agency and area office of the Bureau from among individuals who have applied at the agency or area level for an education position or who have applied at the national level and have indicated in such application an interest in working in certain areas or agencies; and

(ii) that a list of qualified and interviewed applicants for education positions be maintained in the Office from among individuals who have applied at the national level for an education position and who have expressed interest in working in an education position anywhere in the United States;

(B) that a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2) of this section, in order for a tribal member to be hired in an education position to teach courses on tribal culture and language and that subject to subsection (d)(2)(A) of this section, a determination by a school board that such a person be hired shall be followed by the supervisor; and

(C) that it shall not be a prerequisite to the employment of an individual in an education position at the local level that such individual's name appear on the national list maintained pursuant to subsection (c)(1)(A)(ii) of this section or that such individual has applied at the national level for an education position.

(2) The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations, if the Secretary determines that failure to do so would result in that position remaining vacant.

(d) Regulatory requirements respecting appointment of educators; administrative procedures applicable to appointment, etc.

(1) In prescribing regulations to govern the appointment of educators, the Secretary shall require—

(A)(i) that educators employed in a school (other than the supervisor of the school) shall be hired by the supervisor of the school unless there are no qualified applicants available, in which case the vacant position shall be filed[1] at the national level from the list maintained pursuant to subsection (c)(1)(A)(ii) of this section.

(ii) each school supervisor shall be hired by the superintendent for education of the agency office of the Bureau in which the school is located, and

(iii) educators employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office;

(B) that before an individual is employed in an education position in a school by the supervisor of a school (or, with respect to the position of supervisor, by the appropriate agency superintendent for education), the local school board for the school shall be consulted, and that subject to subsection (d)(2) of this section, a determination by the school board that such individual should or should not be so employed shall be followed by the supervisor (or with respect to the position of supervisor, by the agency superintendent for education); and

(C) that before an individual may be employed in an education position at the agency level, the appropriate agency school board shall be consulted, and that, subject to subsection (d)(3) of this section, a determination by such school board that such individual should or should not be employed shall be followed by the agency superintendent for education.

(2)(A) The supervisor of a school may appeal to the appropriate agency superintendent for education any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school other than that of

[1] So in original. Probably should be "filled".

supervisor. Upon such an appeal, the agency superintendent for education may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(B) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for a school that an individual be employed, or not be employed, as the supervisor of the school. Upon such an appeal, the Director of the Office may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(3) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office. Upon such an appeal, the Director of the Office may, for good cause and in writing to the agency school board, overturn the determination of the agency school board with respect to the employment of such individual.

(4) Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position in the Bureau. If such individual is employed at the local level, such individual's name shall immediately be forwarded to the Secretary, who shall, as soon as possible but in no event in more than thirty days, ascertain the accuracy of the statement made by such individual pursuant to the first sentence of this subparagraph. If the individual's statement is found to have been false, such individual, at the Secretary's discretion, may be disciplined or discharged. If the individual had applied at the national level for an education position in the Bureau, if[1] the appointment of such individual at the local level shall be conditional for a period of ninety days, during which period the Secretary may appoint a more qualified individual (as determined by the Secretary) from the list maintained at the national level pursuant to subsection (c)(1)(A)(ii) of this section to the position to which such individual was appointed.

(5) Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards, authority over, or control of, educators.

(e) Regulatory requirements respecting discharge and conditions of employment of educators; administrative procedures applicable to discharge, etc.

(1) In prescribing regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

(A) that procedures be established for the rapid and equitable resolution of grievances of educators;

(B) that no educator may be discharged without notice of the reasons therefor and opportunity for a hearing under procedures that comport with the requirements of due process; and

(C) educators employed in Bureau schools shall be notified sixty days prior to the end of the school year whether their employment contract will be renewed for the coming year.

(2) The supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school. Upon giving notice of proposed discharge to an educator, the supervisor involved shall immediately notify the local school board for the school of such action. A determination by the local school board that such educator shall not be discharged shall be followed by the supervisor. The supervisor shall have the right to appeal such action to the superintendent for education of the appropriate agency office of the Bureau. Upon such an appeal, the agency superintendent for education may, for good cause and in writing to local school board, overturn the determination of the local school board with respect to the employment of such individual.

(3) Each local school board for a Bureau school shall have the right (A) to recommend to the supervisor of such school that an educator employed in the school be discharged, and (B) to recommend to the superintendent of education of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.

(f) Waiver of applicability of Indian preference laws to covered personnel actions; exception; definitions

(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created).

(2) For purposes of this subsection, the term "tribal organization" means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of title 43; or

(B) in connection with any personnel action referred to in this subsection, any local school board as defined in section 2019 of this title, and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(3) The term "Indian preference laws" means section 472 of this title or any other provision

[1] So in original. The word "if" probably should be deleted.

of law granting a preference to Indians in promotions and other personnel actions, except that such term shall not be considered to include section 450e(b) of this title.

(g) Determinations respecting applicability or inapplicability of Federal statutory provisions relating to classification of Bureau positions and employment

Subject to the authority of the Director of the Office of Personnel Management to determine finally the applicability of chapter 51 of title 5 to specific positions and employees in the executive branch, the Secretary shall determine in accordance with subsection (a)(1) of this section the applicability or inapplicability of such chapter to positions and employees in the Bureau.

(h) Rates of basic compensation or annual salary for educators and education positions; cost-of-living allowance for educators employed in education position in Alaska; postdifferential pay

(1) The Secretary shall fix the basic compensation or annual salary rate for educators and education positions at rates comparable to the rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5 is applicable.

(2) Each educator employed in an education position in Alaska shall be paid a cost-of-living allowance equal to 25 per centum of the rate of basic compensation to which such educator is entitled.

(3) The Secretary may pay a postdifferential not to exceed 25 per centum of the rate of basic compensation, on the basis of conditions of environment or work which warrant additional pay as a recruitment and retention incentive.

(i) Leave system credits

Any individual—

(1) who on November 1, 1978, is holding a position which is determined under subsection (f) of this section to be an education position and who elects under subsection (*o*)(2) to be covered under the provisions of this section, or

(2) who is an employee of the Federal Government or the municipal government of the District of Columbia and is transferred, promoted, or reappointed, without break in service, from a position under a different leave system to an education position,

shall be credited for the purposes of the leave system provided under regulations prescribed pursuant to subsection (b)(10) of this section, with the annual and sick leave to his credit immediately before the effective date of such election, transfer, promotion, or reappointment.

(j) Liquidation of remaining annual leave upon termination of employment with Bureau; exception

Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, except that leave earned or accrued under regulations prescribed pursuant to subsection (b)(10) of this section shall not be so liquidated.

(k) Transfer of remaining leave credit upon transfer, promotion, or reappointment of educator to a Federal Government position with different leave system

In the case of any educator who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the regulations prescribed pursuant to subsection (b)(10) of this section shall be transferred to his credit in the employing agency on an adjusted basis in accordance with regulations which shall be prescribed by the Director of the Office of Personnel Management.

(*l*) Ineligibility for employment in Bureau for remainder of contractual term upon voluntary termination of present employment by educator under contract

An educator who voluntarily terminates employment with the Bureau before the expiration of the existing employment contract between such educator and the Bureau shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

(m) Nonapplicability to educator of dual compensation provisions during recess period employment; prerequisites

In the case of any educator employed in an education position described in subsection (n)(1)(A) of this section who—

(1) is employed at the close of a school year,

(2) agrees in writing to serve in such a position for the next school year, and

(3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to in subsection (g)(2) or (g)(3), section 5533 of title 5, relating to dual compensation, shall not apply to such educator by reason of any such employment during a recess period for any such receipt of additional compensation.

(n) Definitions

For the purpose of this section—

(1) The term "education position" means a position in the Bureau the duties and responsibilities of which—

(A) are performed on a school-year basis principally in a Bureau school and involve—

(i) classroom or other instruction or the supervision or direction of classroom or other instruction;

(ii) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(iii) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(B) are performed at the agency level of the Bureau and involve the implementation

of education-related programs other than the position of agency superintendent for education.

(2) The term "educator" means an individual whose services are required, or who is employed, in an education position.

(o) Covered individuals; election of coverage

(1) This section shall apply with respect to any individual hired after the effective date of subsection (a)(2) of this section for employment in an education position and to the position in which such individual is employed. Subject to paragraph (2), the enactment of this Act shall not affect the continued employment of any individual employed immediately before the effective date of subsection (a)(2) of this section in an education position, or such individual's right to receive the compensation attached to such position.

(2) Any individual employed in an education position immediately before the effective date of subsection (a)(2) of this section may, within five years of November 1, 1978, make an irrevocable election to be covered under the provisions of this section.

(Pub. L. 95-561, title XI, § 1131, Nov. 1, 1978, 92 Stat. 2322; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (h)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

This Act, referred to in subsec. (o) (1), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 20, Education, and Tables.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 472a of this title.

§ 2012. Management information system; establishment, scope, etc.

The Secretary shall establish within the Bureau, within one year after November 1, 1978, a computerized management information system, which shall provide information to all agency and area offices of the Bureau, and to the Office. Such information shall include but shall not be limited to—

(1) student enrollment;
(2) curriculum;
(3) staff;
(4) facilities;
(5) community demographics;
(6) student assessment information; and
(7) information on the administrative and program costs attributable to each Bureau program, divided into discreet elements.

(Pub. L. 95-561, title XI, § 1132, Nov. 1, 1978, 92 Stat. 2326; Pub. L. 96-46, § 2(b)(9), Aug. 6, 1979, 93 Stat. 341.)

AMENDMENTS

1979—Par. (7). Pub. L. 96-46 added par. (7).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-46 effective Oct. 1, 1978, see section 8 of Pub. L. 96-46, set out as an Effective Date of 1979 Amendment note under section 2701 of Title 20, Education.

§ 2013. Bureau education policies, practices, and procedures; development, etc., of draft and finalized versions by Secretary; nature of policies, etc.

Within one hundred and eighty days of November 1, 1978, the Secretary shall develop, publish in the Federal Register, and submit to all agency and area offices of the Bureau, all tribal governments, and the appropriate committees of the Congress, a draft set of education policies, procedures, and practices for education-related action of the Bureau. The Secretary shall, within one year of November 1, 1978, provide that such uniform policies, procedures, and practices shall be finalized and promulgated. Thereafter, such policies, procedures, and practices and their periodic revisions, shall serve as the foundation for future Bureau actions in education.

(Pub. L. 95-561, title XI, § 1133, Nov. 1, 1978, 92 Stat. 2327.)

§ 2014. Uniform education procedures and practices by Bureau divisions; formulation, etc.

The Secretary shall cause the various divisions of the Bureau to formulate uniform procedures and practices with respect to such concerns of those divisions as relate to education, and shall report such practices and procedures to the Congress.

(Pub. L. 95-561, title XI, § 1134, Nov. 1, 1978, 92 Stat. 2327.)

§ 2015. Recruitment policy for Indian educators; promotion plan for Bureau employees; contents of plan

The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan shall include opportunities for acquiring work experience prior to actual work assignment.

(Pub. L. 95-561, title XI, § 1135, Nov. 1, 1978, 92 Stat. 2327.)

§ 2016. Annual reports to Congressional committees; contents

The Secretary shall submit to each appropriate committee of the Congress a detailed annual report on the state of education within the Bureau and any problems encountered in the field of education during the year. Such report shall contain suggestions for improving

the Bureau educational system and increasing local Indian control of such system.

(Pub. L. 95-561, title XI, § 1136, Nov. 1, 1978, 92 Stat. 2327.)

§ 2017. Constitutional and civil rights of Indian children attending Bureau schools; rules and regulations

Within six months of November 1, 1978, the Secretary shall prescribe such rules and regulations as are necessary to insure the constitutional and civil rights of Indian students attending Bureau schools, including, but not limited to, their right to privacy under the laws of the United States, their right to freedom of religion and expression and their right to due process in connection with disciplinary actions, suspensions, and expulsions.

(Pub. L. 95-561, title XI, § 1137, Nov. 1, 1978, 92 Stat. 2327.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2018 of this title.

§ 2018. Regulations implementing administrative, etc., provisions; applicability; promulgation, submission, and effect

Regulations required to be adopted under sections 2006 through 2017 of this title shall be deemed rules of general applicability prescribed for the administration of an applicable program for the purposes of section 1232 of title 20 and shall be promulgated, submitted for congressional review, and take effect in accordance with the provisions of such section.

(Pub. L. 95-561, title XI, § 1138, Nov. 1, 1978, 92 Stat. 2327.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2008, 2009 of this title.

§ 2019. Definitions

For the purpose of this chapter—

(1) the term "agency school board" means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Secretary in consultation with the affected tribes, except that, in agencies serving a single school, the school board of such school shall fulfill these duties;

(2) the term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior;

(3) the term "Commissioner" means the Commissioner of Education;

(4) the term "financial plan" means a plan of services to be provided by each Bureau school;

(5) the term "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes;

(6) the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State, and includes any State agency which directly operates and maintains facilities for providing free public education;

(7) the term "local school board", when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Secretary in consultation with the affected tribes;

(8) the term "Secretary" means the Secretary of the Interior;

(9) the term "supervisor" means the individual in the position of ultimate authority at a Bureau school; and

(10) the term "tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 95-561, title XI, § 1139, Nov. 1, 1978, 92 Stat. 2238.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act (85 Stat. 688), referred to in par. (10), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under sectdion 1601 of Title 43 and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2011 of this title.